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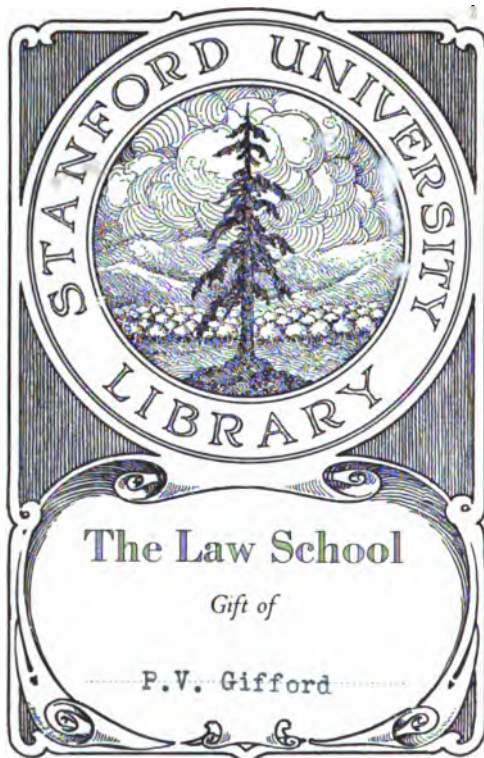
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A TREATISE
ON THE LAW RELATING TO
PRIVATE CORPORATIONS
IN PENNSYLVANIA

BY

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Of the Dauphin County Bar

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PUBLIC SERVICE CORPORATIONS," ETC.**

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923. History of Legislation Relative to Banks.

Until comparatively recent times banks were the only corporations of importance in Pennsylvania, and the enactments in regard to them have, therefore, been numerous. An article containing the history of such legislation, by the writer hereof, may be found in the History of Banking, by John J. Knox, published by Bradford Rhodes and Company, of New York, in which article the subject is treated of at some length.

Space permits of reference here only to the later acts.

On March 31, 1860, there was passed an act to establish a free banking system in Pennsylvania, P. L., 489. This act, as amended by the Act of May 1, 1861, P. L., 503, provided for the formation of banks of issue, by the voluntary association of individuals, the circulation of which banks was to be secured by the deposit of securities with the Auditor General. These acts followed the Free Banking System of New York, on which the National Bank System was based.

But few banks were incorporated under these acts because it was easy to get a special charter from the Legislature, not subject to the requirements of the acts, and the people had not, apparently, been educated to the point of appreciating the greater security of the issues of banks formed under the Free Banking Acts. Moreover, before the system had been well tried, the National Bank Act was passed, and practically all the banks in the State became National Banks, the tax on circulation of State banks, imposed by said act, compelling all banks of issue to do so.

The passage of special acts of incorporation being prohibited by the Constitution of 1874, the Act of May 13, 1876, P. L., 161, was passed, providing for the incorporation of banks of discount, which is still in force, as since amended.

924. Incorporation—Articles of Association.

Corporations for carrying on the business of banking may be formed under the provisions of this act by any number of persons, not less than three, who shall enter into articles of association, which shall specify the object for which the association is formed, and may contain any provisions, not inconsistent with this act, which the association may desire to adopt for the regulation and conduct of its business and affairs; which articles shall be signed by the persons forming such association, and a copy of them shall

be forwarded to the Attorney General for his inspection and approval, and if approved by him he shall endorse his approval thereon, and transmit the same to the Auditor General to be filed in his office.¹

925. Publication of Notice of Application for Charter.

Before application shall be made under the provisions of this act for the creation of any corporate body with banking or discounting privileges, or for the renewal of the charter or increase of capital thereof, the person forming the same shall cause a notice of such intended application to be advertised in two newspapers printed in the county in which such corporate body is intended to be located, at least once a week, for three months before such application shall be made; and the notice of such application shall specify the name and style, the location, the specific object for which created, the amount of capital, and in the case of the renewal or extension of any such corporate body, such notice shall also specify the amount of increase of capital stock, if any such increase be intended. If there be only one paper printed in the county in which such corporate body is intended to be located, the publication of such notice in one paper shall be deemed sufficient, but if there be no paper printed in such county, then the notice shall be given in at least one paper published in one of the nearest adjoining counties: *Provided*, That all persons having advertised in the year one thousand eight hundred and seventy-five, at least six months previous to the meeting of the present Legislature, their intention to apply for bank charters under the then existing laws, shall be deemed to have complied with the provisions of this section relative to giving public notice by advertising.²

926. Form of Certificate—Approval of the Same.

The persons forming such associations shall, under their hands, make a certificate,^{2*} which shall specify:

(1) Sec. 1, Act May 13, 1876, P. L., 161. Take notice, that all the duties imposed upon the Auditor General by this act are, by Act of February 11, 1895, P. L., 4, Sec. 10, transferred to the Commissioner of Banking.

(2) Sec. 4, Act May 13, 1876, P. L., 161.

(2*) The certificate must be signed by incorporators in person. The name of an incorporator may not be affixed to a certificate by an attorney in fact, Charter Acknowledgments, 28 Pa. C. C., 187 (1903).

First. Name (subject to the approval of the Auditor General [Commissioner of Banking]).

Second. Location or place of business, particularly designating the county, city, borough or village.

Third. Amount of capital stock and number of shares in which divided.

Fourth. The names and places of residence of shareholders, and number of shares held by each.

Fifth. A statement that such certificate is made to enable the persons named to form a corporation for banking purposes under this act.

This certificate shall be acknowledged before a judge or notary public, which certificate, with acknowledgment certified and authenticated by the seal of such court or notary public, shall be transmitted, after approval, by the Attorney General, of the articles of association as hereinbefore directed, to the Auditor General [Commissioner of Banking] to be filed, recorded and preserved in his office; copies of such certificate duly certified by the Auditor General [Commissioner of Banking] and authenticated by the seal of office, shall be conclusive evidence in all courts of the Commonwealth of the existence of such corporation, and of every other matter or thing which could be proved by the production of the original certificate.³

927. Issue of Letters Patent.

The Auditor General [Commissioner of Banking] upon the receipt of the articles of association with the approval thereon of the Attorney General as aforesaid and the certificate hereinbefore provided, shall certify a copy of such certificate to the Governor, who shall, upon receiving the same, cause letters patent, under the great seal of the Commonwealth, to be issued to said banking corporations.⁴

928. Reservation of Power to Revoke Charters.

The Legislature reserve the power to revoke or annul the charters of all corporations organized under this act whenever in their opinion it may be necessary for the public welfare, in such a manner however that no injustice shall be done to the stockhold-

(3) Sec. 2, Act May 13, 1876, P. L., 161.

(4) Sec. 3, Act May 13, 1876, P. L., 161

ers, and such corporations shall be subject to all the laws of this Commonwealth regulating the taxation of banking corporations therein.⁵

929. Acceptance of Act of May 13, 1876.

Any corporation now in existence, chartered under any of the laws of this State, making application to come under any of the provisions of this act, shall do so by coming under all the provisions of this act, and shall re-organize the said corporation to conform with this act.⁶

930. Corporate Powers.

Every association formed under the provisions of this act, shall from the date of the letters patent issued thereto, be a body corporate, but shall transact no business except such as may be incidental to the purpose of its organization, and shall have power to adopt a corporate seal, have succession by the name designated in its articles of association for the term of twenty years from the date of the letters patent, unless sooner dissolved under the provisions of its articles of association or this act; by its corporate name it may make contracts, sue and be sued, complain, prosecute and defend in any court of law and equity or before any magistrate, as fully as natural persons, and process against such corporation may be served upon its president or cashier, or by leaving a copy thereof with one of the officers thereof, during the usual hours of business; it shall elect or appoint directors, and by its board of directors, appoint a president, vice-president, cashier and other officers, define their duties, require bonds of them, fixing the penalty thereof, dismiss any of said officers at pleasure and appoint others to fill their places, and exercise under this act all such power as shall be necessary to carry on the business of banking, by loaning money, discounting, selling, buying or negotiating promissory notes, drafts, coin and bullion, bills of exchange and all other written evidences of debt and specialties, and transact all such other business as shall appertain to the business of banking, and its board of directors shall have power to designate and regulate the manner in which its stock shall be transferred, directors elected or appointed, officers appointed, its property transferred

(5) Sec. 31, Act May 13, 1876, P. L., 161.

(6) Sec. 32, Act May 13, 1876, P. L., 161.

and general business conducted, and all the privileges granted by this act to associations organized under it, shall be by them exercised and enjoyed; the usual business of the corporation shall be transacted at an office or banking house in the place specified.⁷

Banks have no authority to act as trustee under a mortgage.^{7*}

931. Power to Borrow and Loan Money, Hold Collateral Security, Etc.

All associations incorporated under the provisions of this act shall have the power and may borrow or lend money for such period as they may deem proper, may discount bills of exchange, foreign or domestic, promissory notes or other negotiable paper, and the interest may be received in advance, and shall have the right to hold in trust or as collateral security for loans, advances or discounts, estate, real, personal or mixed, including the notes, bonds, obligations or accounts of the United States, individuals or corporations, and to purchase, collect and adjust the same, and to dispose thereof for the benefit of the said corporation or for the payment of the debts as security for which the same may be held: *Provided*, That no interest shall be paid directly or indirectly for any money deposited with such association, except foreign correspondents or correspondents in other States on daily balances, and then at a rate not to exceed three per centum per annum.⁸

932. May Loan Money on Unincumbered Real Estate.

Banks chartered under the provisions of the laws of the Commonwealth of Pennsylvania be and they are hereby authorized to loan money on the security of bonds and mortgages on unincumbered real estate situated in this State, not in excess of their time deposits, and to invest their funds, not exceeding twenty-five per centum of their capital stock, surplus and undivided profits, in the purchase of such mortgages; and may also purchase, for investment, any interest bearing bonds or other obligations of any corporation or individual.^{8*}

(7) Sec. 6, Act May 13, 1876, P. L., 161.

(7*) G. S. and D. Bank, 32 Pa. C. C., 465 (1906).

(8) Sec. 7, Act May 13, 1876, P. L., 161. See Sec. 961.

(8*) Act July 10, 1901, P. L., 639.

933. Power to Hold Real Estate.

It shall be lawful for any association incorporated under this act to purchase, hold and convey real estate as follows:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith as security for debts.

Third. Such as it shall purchase at sales under judgments, decrees or mortgages held by such corporation, or shall purchase to secure debts due to said corporation.

Such corporation shall not purchase or hold real estate in any other case or for any other purpose than as specified in this section, nor shall it in any case hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased by it, except such as may be necessary for its immediate accommodation in the transaction of its business, for a longer period than five years.⁹

934. May Improve Real Estate Held for Purposes of Their Business and Lease Portions Thereof.

It shall be lawful for such banks of this Commonwealth as have heretofore erected buildings for banking purposes to further expend such sums, not in excess of one-half of their surplus fund, as may be necessary to renew or replace such buildings with such new or additional structures as may be suitable and convenient for the transaction of their banking business, and to lease from time to time such portions or apartments of said buildings as are not required for banking purposes, and to receive rents for use of the same.¹⁰

It shall be lawful for any bank or banking company of this Commonwealth to improve any real estate it may now or hereafter hold for the accommodation and transaction of its business, by erecting new buildings, or by renewing or replacing any building or buildings thereon with such new or additional structures of such dimensions as its board of directors may from time to time deem expedient; and to use such portion thereof as may be suitable and convenient for the transaction of its business for that

(9) Sec. 8, Act May 13, 1876, P. L., 161, as amended by Act of April 19, 1901, P. L., 79.

(10) Act of May 23, 1893, P. L., 111.

purpose; and to lease and let, from time to time, such portions or apartments of such building or buildings as it may not require for its banking business, and to receive rents for the use of the same: *Provided, however,* That no such bank or banking company shall, for the purposes aforesaid, reduce its surplus fund below fifty per centum of what its amount may be when such improvement, buildings, et cetera, may be commenced.¹¹

935. Capital Stock.

No corporation shall be organized under this act with a capital stock of less than fifty thousand dollars, divided into shares of not less than fifty dollars each, which shall be deemed personal property and transferable on the books of the corporation in such manner as may be prescribed by the by-laws and articles of association thereof; and every person to whom stock shall be transferred as aforesaid, shall, in proportion to the shares received, succeed to all the rights and liabilities of the prior holders thereof, and no change shall be made in the articles of association by which the rights, remedies or securities of the existing creditors of the corporation shall be impaired. The shareholders of any corporation formed under this act, shall be individually responsible, equally and ratably, but not one for the other, for all contracts, debts and engagements of such corporation to the amount of their stock therein at the par value thereof in addition to the par value of such shares.¹²

936. Payment of Capital Stock.

Before any association incorporated under this act shall commence business, at least fifty per centum of its capital stock shall be paid in, and the remainder of the capital stock of such corporation shall be paid in instalments of at least ten per centum on the whole amount of the capital per month from the time it shall commence business, and the payment of each instalment shall be certified under oath to the Auditor General by the president and cashier of the corporation.¹³

(11) Act of May 21, 1901, P. L., 288.

(12) Sec. 5, Act May 13, 1876, P. L., 161.

(13) Sec. 9, Act of May 13, 1876, P. L., 161. It will be remembered that the functions of the Auditor General conferred by this act, are transferred to the Commissioner of Banking by the Act of February 11, 1895, P. L., 4.

937. Proceedings Against Delinquent Stockholders.

If any shareholder or his assignee shall fail to pay any instalment on the stock held by him, when the same is required by the by-laws, the articles of association, the resolution authorizing such stock, or the provisions of this act, the directors of such corporation may allot the same to the other shareholders in the proportion they shall hold shares in the capital stock, or to those who shall desire to take the same; should such shareholders not take the stock of such delinquent shareholder, it shall be sold at public auction to any person who will pay the highest price therefor, and not less than the amount due thereon, and the excess, if any, shall be paid to such delinquent shareholder; before any such public sale shall be made, public notice thereof shall be published for not less than three weeks in a newspaper of general circulation in the city or county where such corporation is located, and if no newspaper is published in such county or city, then in a newspaper published nearest thereto; if no bidder can be found who will pay the amount due on such stock to the corporation and the expenses of sale, the amount previously paid shall be forfeited to the corporation, and such stock shall be disposed of as the directors may order within four months from the time of such forfeiture, and if not sold, it shall be canceled and deducted from the capital of the corporation; and if such cancellation and deduction shall reduce the capital of the corporation below minimum of the capital required by this act, the capital stock thereof shall, within thirty days from the date of such cancellation, be increased to the requirements of this act; in default of such increase, such bank shall be adjudged to have committed an act of insolvency, and its business shall be closed as hereinafter provided in cases of insolvency.¹⁴

938. Increase of Capital Stock.

Any corporation formed under this act may provide in its articles of association for an increase of its capital stock from time to time as may be deemed expedient, subject however, to the regulations of this act; that only such maximum increase shall be allowed as shall be provided for in the articles of association, unless a majority of the stockholders shall formally certify in writing to the Auditor General their consent to a greater increase, and no in-

(14) Sec. 11, Act of May 13, 1876, P. L., 161.

crease of capital shall be valid unless the same shall be actually paid in within one year from the date of the written consent as aforesaid to such increase, and notice of such payment transmitted to the Auditor General; and every corporation, by a vote of the shareholders owning two-thirds of its capital stock, may reduce such capital to any sum not below the minimum amount of capital required by this act for such corporations; before such decrease shall be allowed, notice thereof shall be given to the Auditor General and his approval thereto obtained.¹⁵

939. Decrease of Capital Stock.

The capital stock of any banking corporation created by the laws of this Commonwealth, may be decreased, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company: *Provided*, That no diminution of the capital stock of any company under this act, shall affect or destroy the liabilities of stockholders for the indebtedness of corporations where they are now liable under existing laws.¹⁶

940. Meeting of Stockholders.

Any banking corporation desirous of decreasing its capital stock as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth, and notice of the time, place and object of such meeting, shall be published once a week for sixty days prior to such meeting, in at least two newspapers published in the county, city, or borough where such office or place of business is situated.¹⁷

941. Election.

At the meeting called pursuant to the second section of this act, the stockholders present at said meeting shall vote for or against such decrease; said election shall be conducted by three judges, stockholders of said banking corporation, appointed by the board

(15) Sec. 10, Act of May 13, 1876, P. L., 161. The duties imposed on the Auditor General by this section were transferred to the Commissioner of Banking by the Act of February 11, 1895, P. L., 4, Sec. 10.

(16) Sec. 1, Act June 11, 1879, P. L., 133.

(17) Sec. 2, Act June 11, 1879, P. L., 133.

of directors to hold said election, and who shall respectively take and subscribe an oath or affirmation before any officer authorized by law to conduct such election to the best of their ability.¹⁸

942. Ballots—Proxies—Statement to Be Furnished Judges of Election.

Each ballot shall have endorsed thereon the number of shares thereby represented; but no share or shares transferred within sixty days, shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such banking corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and the number of shares by each respectively held, which statement shall be signed by one of the chief officers of such banking corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.¹⁹

943. Election Return to Be Filed.

It shall be the duty of such banking corporation, if consent is given to such decrease, to file in the office of the Secretary of the Commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act, with a copy of the resolution and notice calling the same thereto annexed; and upon the decrease of the capital stock of such banking corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of such decrease; and in case of neglect or omission so to do, such corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the Auditor General and State Treasurer, as accounts for taxes due the Commonwealth are settled and collected; and the Secretary of the Commonwealth shall cause said return to be recorded in a book

(18) Sec. 3, Act June 11, 1879, P. L., 133.

(19) Sec. 4, Act June 11, 1879, P. L., 133.

kept for that purpose, and furnish a certified copy of the same to the Auditor General; and thereupon, the directors of such corporation shall alter and change the par value of the shares thereof to conform to the decrease for which the largest number of votes shall have been cast at such election, and issue new certificates of stock representing the par value fixed by such election, signed by the proper officers of said corporation, and deliver the same to the shareholders entitled thereto on the surrender of their former certificates, which shall be canceled by said officers before paying any dividend declared after such reduction.²⁰

944. Decrease of Capital Stock—Continued.

The capital stock of any banking corporation, created by the laws of this Commonwealth, may be decreased from time to time, subject to the provisions of the act of the eleventh of June, one thousand eight hundred and seventy-nine, entitled "An act to provide for the manner of decreasing the capital stock of banking corporations:" *Provided*, That such decrease of the capital stock of any such banking company shall not affect or destroy the liabilities of the stockholders for the indebtedness of such corporations, at the time of such decrease, where they are now liable, under their charters, but that for all deposits received by banking corporations after such decrease, the stockholders shall only be liable for the indebtedness of such banking company as the charter provides.²¹

Whenever any banking company shall have fixed and subscribed a certain capital, but have paid in only a portion of such capital, and have issued capital stock certificates for the amount thus fixed to each shareholder, subject to assessment for the unpaid portion, such banking company may decrease the capital of such banking company to the amount paid in, and thereupon call in all outstanding capital stock certificates, and issue in place thereof new certificates, fully paid and non-assessable for any purpose except only taxation: *Provided*, That no banking company doing a general banking business in this Commonwealth, shall decrease the capital stock of any bank having stock so issued, to less than two hundred thousand dollars, nor shall any savings bank, trust company or other savings institution decrease the capital of any in-

(20) Sec. 5, Act June 11, 1879, P. L., 133.

(21) Sec. 1, Act June 22, 1883, P. L., 155.

stitution having stock so issued, to less than fifty thousand dollars: *And provided further*, That notice of said decrease shall be published, in two or more newspapers in the county in which said bank is located, for four weeks prior to said decrease.²²

945. Directors.

The affairs of every corporation organized under this act shall be managed by not less than five directors, one of whom shall be president and another vice-president; no cashier, clerk or teller, in any of the corporations organized under this act, shall be eligible as a director thereof; every director shall during his term of service, be a citizen of the United States and a citizen of Pennsylvania; each director shall own in his own right at least ten shares of the capital stock of the corporation of which he is a director; each director when appointed or elected, and before assuming the duties of his office, [shall] take an oath that he will, so far as a duty devolves upon him, diligently and honestly administer the affairs of such corporation, and that he is the *bona fide* owner in his own right of the number of shares of stock required by this act, subscribed by him or standing in his name on the books of the corporation, and that the same is not hypothecated or pledged in any way as security for any loan or debt, which oath shall be transmitted to the Auditor General to be filed and kept in his office.²³

946. Elections of Directors—Terms—Vacancies.

The directors of any corporation first elected or appointed, shall hold their places until their successors shall be elected and qualified; all subsequent elections shall be held annually on such day in the year as may be specified in the articles of association; and the directors elected on such day shall hold their places for one year and until their successors are elected and qualified; any director ceasing to be the owner of the requisite amount of stock, or who shall in any other way become disqualified, shall thereby vacate his place; any vacancy in the board shall be filled by ap-

(22) Sec. 2, Act June 22, 1883, P. L., 155.

(23) Sec. 12, Act May 13, 1876, P. L., 161. The duties of the Auditor General in connection with banks, except as regards the taxation thereof, are transferred to the Commissioner of Banking by Act of February 11, 1895, P. L., 4, Sec. 10.

pointment by the remaining directors, and any one so appointed shall act as director until the next annual election; if for any cause an election for directors shall not be held at the time appointed, an election may be held on a subsequent day, at least thirty days' notice thereof having been given by advertisement in a newspaper published in the city or county where such corporation is located, or if no newspaper is published therein, then in the one published the nearest thereto; if the articles of association do not fix the day on which the election shall be held, the day for election shall be designated by the directors in the by-laws; in case the directors fail to fix a day for the election as aforesaid, two-thirds in value of the shareholders shall designate a day for that purpose.²⁴

947. Voting at Elections of Directors—Proxies—Cumulative Voting.

In all elections for directors and otherwise each shareholder shall be entitled to one vote on each share of stock held by him; shareholders may vote by proxies executed in writing. No officer, clerk, teller or book-keeper of the corporation shall act as a proxy, and no shareholder whose liability is past due shall be allowed to vote; in all elections for directors of a corporation organized under this act, each shareholder may cast the whole number of his votes for one candidate or distribute them upon two or more candidates as he may prefer.²⁵

948. Directors to Keep a List of Shareholders.

The directors of every corporation under this act shall cause to be kept at all times a full and correct list of the names and residences of the shareholders and the number of shares held by each therein, in the office where its business is transacted, and such list shall be subject to the inspection of the shareholders and creditors of the corporation and the officer authorized to assess taxes under any State authority during business hours of each day in which business may be lawfully transacted; a copy of this list on the first Monday of June in each year, verified by the president and cashier, shall be transmitted to the Auditor General.²⁶

(24) Sec. 13, Act May 13, 1876, P. L., 161.

(25) Sec. 14, Act May 13, 1876, P. L., 161.

(26) Sec. 15, Act of May 13, 1876, P. L., 161. Under the Act of February 11, 1895, P. L., 4, the list is now transmitted to the Commissioner of Banking.

949. Books to Be Open to Inspection of the Directors—Minutes of Directors to Be Kept.

The books, funds, papers and correspondence of the several corporations under this act, shall at all times be subject to the inspection of the directors who shall keep fair and regular entries of their proceedings in a book provided for that purpose, and on any question when two directors shall require it, the yeas and nays shall be inserted on their minutes, which minute shall at all times, on demand, be produced to the stockholders at a general meeting, and shall be subject, also, together with their other books and papers to the inspection of any committee who shall be authorized by the Legislature to require the same.²⁷

950. Regulation of Loans to Directors and Others—Debts Owning to the Corporation—Liens on Stock.

No director of any corporation under this act shall receive as a loan from such corporation an amount greater than ten per centum of the capital stock actually paid in, and the gross amount loaned to all the officers and directors of such corporations and to the houses or firms in which they may be interested directly or indirectly, shall not exceed at any time the sum of twenty-five per centum of the capital stock paid in; and no shareholder shall sell or transfer any shares in the capital stock held in his own right so long as he shall be liable, either as principal debtor, surety or otherwise, to the corporation, for any debt, without the consent of a majority of the directors, nor shall such shareholder, when liable to the corporation for any debt that is overdue and unpaid be entitled to receive any dividend, interest or profit on such shares as long as such liabilities shall so continue overdue, but all such dividends, interest and profits shall be retained by such corporation to discharge such liabilities.²⁸

951. Loans to Directors of Banks, Trust Companies and Savings Institutions.

No director of any banking institution, trust company, or savings institution, having capital stock, heretofore or hereafter incorporated in this Commonwealth, shall receive as a loan an amount greater than ten per centum of the capital stock actually

(27) Sec. 20, Act of May 13, 1876, P. L., 161.

(28) Sec. 21, Act of May 13, 1876, P. L., 161.

paid in, and surplus; and the gross amount loaned to all officers and directors of such corporations, and to the firms or houses in which they may be interested directly or indirectly, shall not exceed at any time the sum of twenty-five per centum of the capital stock paid in, and surplus.²⁹

952. Banks, Trust Companies and Savings Institutions May Not Take Their Capital Stock as Security for Loans.

No corporation under this act shall take as security for any loan or discount, a lien on any part of its capital stock; but the same surety, both in kind and amount, shall be required of persons, shareholders and not shareholders; and no such corporation shall be the holder or purchaser of any of its capital, unless such purchase shall be necessary to prevent loss on a debt previously contracted in good faith, on surety which at the time was deemed adequate for the payment of such debt, without a lien upon such stock, or in case of forfeiture of such stock for the non-payment of instalments due thereon; and the stock so purchased shall, in no case, be held by the corporation so purchasing for a longer period than six months, if the same can be sold for what such stock cost the corporation.³⁰

953. Officers to Enter Into Articles of Agreement for the Proper Discharge of Their Duties—Must Give Bonds.

Before the cashier, teller, book-keeper or other person necessary for executing the business of the corporation shall enter upon their duties, they shall each enter into articles of agreement with the corporation for the proper discharge of his duty, in which it shall be provided, among other things, that he will give the business of the corporation his care and attention, rendering true accounts of all his transactions, never to use the moneys of the corporation in his private transactions nor to engage in private financial operations through his office as one of the officers of said corporation; and they shall each also enter into a bond to the Commonwealth of Pennsylvania in such amount as the board of directors may require, conditioned for the proper and faithful performance of his duties, the security of which bonds shall be approved by the Court of Common Pleas of the county in which the corporation

(29) Sec. 1, Act of June 14, 1901, P. L., 561.

(30) Sec. 2, Act of June 14, 1901, P. L., 561. See Sec. 960.

is located, and recorded within thirty days thereafter in the office for recording deeds in such county; any person aggrieved and suffering injury by the failure of any officer or clerk of the corporation to comply with the conditions of his bond, may commence and prosecute an action on the same in the manner provided for suing official bonds in the act approved June fourteenth, one thousand eight hundred and thirty-six, entitled "An act relative to bonds with penalties and official bonds."³¹

954. Cashier Not to Engage in Any Other Occupation.

No cashier of any corporation under this act shall engage in any other profession, occupation or calling, either directly or indirectly, than that of the duties appertaining to the office of cashier; and if any cashier of such corporation shall, directly or indirectly, engage in the purchase and sale of stocks or in any other profession or calling other than that of his duties as cashier, he shall be guilty of a misdemeanor, and upon conviction thereof in a court of criminal jurisdiction, be sentenced to pay a fine not exceeding five hundred dollars; nothing however in this section shall be construed as to prevent such cashier from managing his own real estate or private property as heretofore, if such property be not vested in mercantile, mechanical or manufacturing operations.³²

955. Embezzlement by Officers.

If any president, cashier, director, clerk, teller, agent or any other officer of any corporation under this act, who shall fraudulently embezzle, abstract or wilfully appropriate to his own use or to the use of any other person or persons, or misapply any money or other property belonging to such corporation or left with the same as a special deposit or otherwise, he or they so offending, upon conviction thereof, shall be fined in any amount not less than the sum so appropriated or embezzled, and to undergo an imprisonment at separate and solitary confinement not exceeding five years: *Provided*, Such conviction shall not prevent any person or persons aggrieved from pursuing their civil remedy against such person so convicted.³³

(31) Sec. 18, Act May 13, 1876, P. L., 161.

(32) Sec. 18, Act May 13, 1876, P. L., 161.

(33) Sec. 19, Act May 13, 1876, P. L., 161.

956. Dividends.

The directors of the corporations under this act may quarterly or semi-annually in each year, as they may see fit, declare a dividend of so much of the net profits of such corporation as they shall judge expedient, and pay the same to its stockholders on demand, at any time not exceeding fifteen days after such dividend is declared; but such corporation shall, before the declaration of a dividend, carry at least one-tenth of the net profits of the preceding quarter, if it is a quarterly dividend, and at least one-tenth of the net profits of the preceding half year, to its surplus fund until such surplus fund shall amount to twenty-five per centum of its capital stock; if the directors of the corporation shall make any dividends which shall impair the capital thereof, such directors consenting thereto shall be jointly and severally liable in an action of debt or bill in equity in their individual capacities to such corporation for the amount of the stock so divided, and each director present or otherwise when such dividend shall be made, shall be adjudged consenting thereto unless he shall forthwith enter his protest on the minutes of the board and give public notice to the stockholders thereof.³⁴

957. Sworn Statement of Condition of Corporation to Be Made on Dividend Day.

On each dividend day the cashier shall make a full, explicit and accurate statement of the condition of the corporation as it shall be on each day previous to the declaring of such dividend, to be verified on the oath of the president and cashier, setting forth—

First. The amount of capital stock actually paid in and then remaining as the actual capital stock of the corporation.

Second. The balances and debts of every kind due to banks and bankers of this State or elsewhere.

Third. The amount due to time and call depositors separately.

Fourth. The total amount of debts and liabilities of every description and the greatest amount since the last previous statement, specifying the time when the same occurred.

Fifth. The amount on hand of bills, bonds, notes and other evidence of debts discounted or purchased by the corporation, gold, silver, coin, bullion and cash on hand, the amount specifi-

(34) Sec. 16, Act May 13, 1876, P. L., 161.

cally and particularly of suspended debts, the amounts considered doubtful, the amount considered bad and the amount in suit or judgment.

Sixth. The value of the real and personal property held for the convenience of the corporations, specifying the amount of each, the amount of real estate taken for debts due the corporation, how taken and still held.

Seventh. The amount of the undivided profits of the corporation.

Eighth. The amount of the liabilities to the corporation by the directors or officers thereof, specifying the particular items and the gross amount thereof separately, as principal debtors, and as endorsers or sureties.

Ninth. The amount of liabilities to the corporation by the stockholders thereof, specifying the gross amount of such liabilities as principal debtors, and the gross amount as endorsers or sureties, which statement shall be entered at length in a book to be provided for that purpose.³⁵

958. Capital Not to Be Withdrawn in Dividends or Loans.

No corporation under this act shall, during the time it shall continue its operations, withdraw or allow to be withdrawn either in form of dividends, loans to stockholders, or in any other manner any portion of its capital stock, except as hereinbefore provided; and if any losses shall at any time have been sustained by such corporation equal to or exceeding its undivided profits then on hand, no dividends shall be made, and no dividends shall be made by any such corporation, while in business operation, to an amount greater than its net profits then on hand, deducting therefrom losses, bad and suspended debts; and all debts due to such corporation, on which interest is due and unpaid for six months, unless the same shall be well secured or in process of collection, shall be considered bad and suspended debts within the meaning of this section.³⁶

959. Voluntary Liquidation.

Any corporation under this act may go into liquidation and be closed by the vote of its shareholders, owning at least two-thirds

(35) Sec. 17, Act May 13, 1876, P. L., 161.

(36) Sec. 24, Act May 13, 1876, P. L., 161.

of its stock, and whenever such vote shall be taken it shall be the duty of the board of directors to cause notice of this fact to be certified under the seal of the corporation to the Auditor General, and publication thereof made for at least three months in two newspapers, if so many are published, if two are not published, then one in the county in which such corporation is located, that it is closing up its affairs and notifying the creditors thereof to present their claims for payment; and it shall be the duty of the said directors, in the name of the corporation, to collect all its assets, apply the same first to the payments of the debts thereof and distribute the surplus, if any, to and among the shareholders in the proportion they hold the capital stock thereof.³⁷

960. Loans May Not Be Made on Stock.

No corporation, under this act, shall take as security for any loan or discount, a lien on any part of its capital stock, but the same surety, both in kind and amount, shall be required of persons, shareholders and not shareholders; and no such corporation shall be the holder or purchaser of any portion of its capital, unless such purchase shall be necessary to prevent loss on a debt previously contracted in good faith on surety which at the time was deemed adequate for the payment of such debt, without a lien upon such stock, or in case of forfeiture of such stock for the non-payment of instalments due thereon, as provided in this act; and the stock so purchased shall in no case be held by the corporation so purchasing for a longer period than six months, if the same can be sold for what such stock cost the corporation.³⁸

961. Interest May Be Paid on Call Deposits.

Banks chartered under the provisions of the law of Pennsylvania, be and they are hereby authorized to pay interest upon deposits payable on demand, and upon daily balances of deposits subject to check. All acts and parts of acts inconsistent herewith are hereby repealed.³⁹

(37) Sec. 25, Act May 13, 1876, P. L., 161. Duties imposed on Auditor General are transferred to Commissioner of Banking, as stated in preceding notes.

(38) Sec. 23, Act May 13, 1876, P. L., 161. See Sec. 952.

(39) Act of June 10, 1897, P. L., 138, repealing Sec. 30, Act May 13, 1876, P. L., 161.

962. Securities Securing Circulation to Be Surrendered to Assignees or Receivers.

Whenever the estate and effects of any bank, or banking company, which has become, or shall hereafter become insolvent, have been, or shall hereafter be committed to an assignee or assignees, receiver or receivers, it shall be in the discretion of the Auditor General of the Commonwealth to deliver to said receiver or receivers, assignee or assignees, such bonds or evidence of debt, deposited with him to secure the circulation of said bank or banking company upon the filing by the said receiver or receivers, assignee or assignees, in the Auditor General's office, a certified copy of the assignment, or of the appointment of receiver or receivers, together with a certificate from the prothonotary of the county in which said bank or banking company is situated, that the said receiver or receivers, assignee or assignees, have given bond for the faithful execution of their trust.⁴⁰

963. Renewal of Bank Charters—Meeting of Stockholders.

The charters of State banks created or renewed and extended under any special or general law of this Commonwealth, shall hereafter be renewed and extended for a term not exceeding twenty years, in the manner following, namely:

When the stockholders of any such State bank shall desire to apply for a renewal and extension of their charter, the board of directors of such bank, or any twenty stockholders thereof, being together proprietors of one-twentieth part of the number of all the shares of the said bank, may call a general meeting of the stockholders of the said bank, to be held at the banking house at a time to be fixed, for the purpose of considering and deciding the question of renewing and extending the charter of the said bank, giving at least thirty days' notice thereof in one or more newspapers published in the city or county in which the bank is located, specifying the object or objects of such meeting.^{40*}

At such meeting the stockholders shall consider and vote for or against the proposition to renew and extend the charter, corporate rights and franchises of the said bank, for any period of years

(40) Act of May 18, 1878, P. L., 70. See Note 41.

(40*) This advertisement may not be waived. *Renewal of Bank Charters*, 14 Pa. C. C., 144 (1893).

not exceeding twenty, each stockholder having the number of votes fixed by law.

If the stockholders of a number holding a majority of the shares of stock of the said bank, voting in person or by proxy, shall decide in favor of renewing and extending their charter, the result shall be certified by the board of directors to the Secretary of the Commonwealth, together with a statement of the condition of said bank, according to a form to be furnished by the Auditor General, on application to him, which statement shall be made by the president and cashier of the said bank under oath or affirmation.⁴¹

964. Petition to the Governor.

Upon the filing of such certificate with the Secretary of the Commonwealth, the board of directors shall present and file therewith a petition to the Governor, setting forth the corporate name of the said bank, the amount of its capital stock, the par value of its shares, the names of the directors, and of the president and cashier, the date of the special or general act creating, and of the last act (if any) renewing and extending its charter or the date of the patent of the Governor, when renewed and extended by patent, the time when the charter will expire, the proceedings of the stockholders to renew and extend, and the term or time of the renewal and extension prayed for, and that due notice of the intended application has been given according to law. The said notice shall be by publication, for at least three months, in two newspapers published daily (or weekly if there be no daily) in the city or town in which said bank is located, or if there be but one such paper published therein, then in the same, or if none such be published therein, then in two such newspapers published nearest thereto, proof of which publication shall be by the affidavit of the publisher before competent authority. On the filing of the said petition, together with the proof of the notice given, in the office of the Secretary of the Commonwealth, the same shall be immediately submitted to the Attorney General of the Commonwealth for examination, who shall forthwith examine the same, and without delay certify to the Governor, by certificate

(41) Sec. 1, Act April 26, 1889, P. L., 61. The duties imposed upon the Auditor General by this act are transferred to the Commissioner of Banking, by the Act of February 11, 1895, P. L., 4.

endorsed upon or annexed to the same, his opinion, whether the said petition is in proper form and conforms to the requisitions of the law, and if not, in what respect its non-conformity consists. If the said Attorney General shall certify that the petition is in proper form, and conforms to the laws of the State, the Governor shall at once submit the same to the Auditor General, who shall forthwith examine the same, and without delay certify upon the same or annexed to the said petition whether the said bank is in good financial standing and repute so far as he knows and believes, whether in the conduct of its affairs, so far as he officially knows, the said bank has conformed to the laws of the State, and if not, in what respect its non-conformity consists, and his opinion, whether the renewal and extension of its charter is or is not consistent with the interests of the public.⁴²

965. Objections to Renewal—Validity of Objections May Be Determined by Mandamus.

If either the Attorney General or the Auditor General shall find objections to the petition of the said bank for a renewal and extension of its charter privileges and franchises, he shall state distinctly and clearly in his certificate to the Governor the objections he finds thereto, and the said bank may by its attorney except to the said objections, and thereupon may proceed by application for a writ of mandamus in the proper court having jurisdiction against said Attorney General or Auditor General, or each if necessary, to have the validity of the said objections determined by the said court according to law, and if determined in favor of the said bank, the said court shall issue its writ of mandamus to the said Attorney General or Auditor General, as the case may be, or against each if necessary, requiring him or each of them as the case may be to issue his certificate in proper form in favor of the said banks, whereupon the Governor shall proceed to issue his patent of renewal and extension in manner hereinafter provided.⁴³

966. Issue of Letters Patent.

If the Attorney General and Auditor General shall certify as aforesaid, affirmatively, in favor of the said bank, the Governor shall forthwith issue his patent under the great seal of the Com-

(42) Sec. 2, Act of April 26, 1889, P. L., 61. See Note 41.

(43) Sec. 3, Act of April 26, 1889, P. L., 61. See Note 41.

monwealth, setting forth briefly the premises, and declaring that the charter of the said bank is renewed and extended for the term of years prayed for in the said petition, and then and thenceforth the said charter and the corporate rights and franchises of the said banks, shall be in law renewed and extended accordingly: *Provided*, And it is hereby declared and enacted that no such bank whose charter is renewed and extended hereafter shall be authorized to issue its own notes or bills for circulation, without first having them registered and countersigned by the proper officer of the State according to law, nor shall such notes or bills for circulation be issued by the said bank until ample security for the full amount thereof shall be deposited with the Auditor General of the Commonwealth for their redemption according to law.⁴⁴

967. Liability of Stockholders in Banks.

From and after the passage of this act all stockholders in banks, banking companies, saving funds institutions, trust companies, and all other incorporated companies doing the business of banks or loaning and discounting moneys as such in this Commonwealth, shall be personally liable for all debts and deposits in their individual capacity to double the amount of the capital stock held and owned by each: *Provided*, That before such liability shall accrue, in case of banks already chartered, the stockholders shall at a regular or adjourned meeting, declare by resolution or otherwise their intention to accept the provisions of this act, and notice of their action shall, within thirty days thereafter, be filed in the office of the Auditor General and Secretary of the Commonwealth, setting forth at length their proceeding, declaring their intention to be bound by its provisions in the same manner and as fully as if the same had been a part of the original act by which they were incorporated.⁴⁵

968. Lawful Rate of Interest.

Hereafter every contract for the loan or advance of money, by banking corporations heretofore incorporated or hereafter to be incorporated under the laws of this Commonwealth, shall be sub-

(44) Sec. 4, Act of April 26, 1889, P. L., 61. See Note 41.

(45) Sec. 1, Act of May 11, 1874, P. L., 135. Duties of Auditor General are transferred to the Banking Commissioner by Act of February 11, 1895, P. L., 4. See Sec. 550.

ject to the provisions of an act, entitled "An act regulating the rate of interest," approved twenty-eighth May, 1858, which provides as follows:

"Sec. 1. That the lawful rate of interest for the loan or use of money, in all cases where no express contract shall have been made for a less rate, shall be six (6) per centum per annum."⁴⁶

969. State Banks Becoming National Banks.

Any bank incorporated or organized by the authority of this Commonwealth, which shall become an association for carrying on the business of banking under the laws of the United States, shall be deemed to have surrendered its charter, if it shall have complied with the requirements of this act: *Provided*, That every such bank shall, nevertheless, be continued a body corporate for the term of three years after the time of such surrender, for the purpose of prosecuting and defending suits by and against it, and of enabling it to close its concerns and to dispose of and convey its property; but not for the purpose of continuing under the laws of this Commonwealth the business for which it was established.⁴⁷

970. Notice of Vote of Stockholders.

When a bank, at a meeting of the stockholders, has voted to become such association, and its directors have procured the authority of the owners of two-thirds of the capital stock to make the certificate required therefor by the laws of the United States, the cashier shall publish notice thereof for thirty days in such newspaper as the meeting of the stockholders may direct, and send like printed notice, by mail or otherwise, to each stockholder.⁴⁸

971. Votes of Stockholders.

At a meeting of the stockholders of any such bank as aforesaid, each stockholder shall be allowed to cast one vote for every share of such capital stock held by him or her, on the question whether or not the said bank shall become such an association as aforesaid, for carrying on the business of banking and of ex-

(46) Sec. 1, Act May 23, 1878, P. L., 109.

(47) Sec. 1, Act of April 26, 1889, P. L., 56.

(48) Sec. 2, Act of April 26, 1889, P. L., 56.

exercising the powers conferred by this act; and every stockholder who is absent may vote by proxy, made at any time after this act shall become a law; and any executor, administrator or trustee holding any such share or shares of such capital stock may vote personally or by proxy, without incurring any responsibility by such vote.⁴⁹

972. Court of Common Pleas May Appoint Auditors to Ascertain Market Value of Shares.

The Court of Common Pleas of the proper county is authorized to ascertain and determine, by the appointment of one or more auditors, not exceeding three, and shall certify to the president and directors of said bank what was the fair market value of the shares of such bank, at the time of paying the last dividend, and if within said thirty days any stockholder, who has not joined in giving such authority, notifies in writing the president or cashier of his desire to surrender his stock upon receiving the value thereof as so determined, such bank shall, within thirty days thereafter, pay such stockholder for his shares, according to such valuation, with interest from the time of paying said dividend, upon his surrendering his shares: *Provided*, That notice shall be given of the time of meeting of the auditor or auditors appointed under the provisions of this section, in one or more newspapers of the proper county, directed to the president, directors and stockholders of such bank.⁵⁰

973. How Fractional Shares Are to Be Valued.

When, in adjusting the shares of stock of any stockholder in a bank surrendering its charter under the provisions of this act, to the value of the shares of an association for banking under the laws of the United States, there shall be fractional shares of the stock of such surrendering bank, the value of such fractional shares shall be taken to be the same as shall have been ascertained to be the value of the shares of refusing stockholders in said bank; and in case there shall be no refusing stockholders, then the value shall be ascertained in the manner directed in relation to refusing stockholders, and, upon the payment of such value, with like interest as is directed to be paid to refusing

(49) Sec. 3, Act of April 26, 1889, P. L., 56.

(50) Sec. 4, Act of April 26, 1889, P. L., 56.

stockholders, the owner of such fractional shares shall deliver the certificate thereof and transfer said fractional shares to such bank: *Provided*, That the directors of the bank and such stockholders may agree upon a sum as the value of such fractional shares and the payment thereof shall have the same effect as if the value had been ascertained in the mode hereinbefore mentioned.⁵¹

974. Reduction of Capital Stock.

The capital stock of such bank shall be reduced to the extent of the par value of the shares so surrendered, and may be further reduced to any amount fixed by authority of the owners of two-thirds the capital stock, by purchase and cancellation of shares, by reducing the par value of each share, or by both methods, as the directors may determine: *Provided*, That such bank, may, if it deems it expedient, instead of reducing its capital stock to the amount so appraised, dispose of the same to any person or persons at the par value thereof without any reduction of capital.⁵²

975. Directors to Deliver Plates and Dies to Court of Quarter Sessions.

When the charter of any bank is surrendered under the provisions of this act, the members of the board of directors last in office shall forthwith deliver up all their plates and dies to the Court of Quarter Sessions in the county in which the bank has been established, and the court shall cause them to be disposed of in such manner as shall be deemed expedient, in order to prevent their use for any unlawful purpose. The members of the board who wilfully refuse or neglect to do so shall be deemed guilty of a misdemeanor and severally punished, on conviction in the proper court, by a fine not exceeding five hundred dollars.⁵³

976. Taxes.

The bank tax imposed by the laws of this Commonwealth shall be paid by such bank up to the date of its becoming such

(51) Sec. 5, Act of April 26, 1889, P. L., 56.

(52) Sec. 6, Act of April 26, 1889, P. L., 56.

(53) Sec. 7, Act of April 26, 1889, P. L., 56.

association, in proportion to the time since the next preceding payment therefor.⁵⁴

977. Certificate of Governor—Surrender of Charter.

When a bank furnishes to the Auditor General satisfactory evidence, by the oaths or affirmations of the president and cashier, and by the exhibition of its books or otherwise, that all the requirements of this act have been complied with in relation to such bank, and that it has become a banking association, under the laws of the United States, the Auditor General shall certify the facts to the Governor, who shall cause notice thereof to be published in some newspaper in the county where such bank is located at least for three weeks. And the charter of the bank shall thereupon be deemed to be surrendered, subject to the provisions of the first section of this act.⁵⁵

978. Assets to Vest in New Association.

When the charter of said bank shall be surrendered to the Commonwealth, under the provisions of this act, all the assets, real and personal, of the said bank, shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the said association for carrying on the business of banking, formed as aforesaid.⁵⁶

979. New Association Liable for Obligations of the Old.

Nothing in this act shall be construed as releasing such association from its obligation to pay and discharge all the liabilities incurred by the bank before becoming such association.^{56*}

CO-OPERATIVE BANKING ASSOCIATION.

980. May be Incorporated.

Co-operative banking associations may be incorporated under this act upon compliance with the requirements of section eleven, article sixteen, State Constitution, when ten or more persons of lawful age, citizens of this Commonwealth, who shall have asso-

(54) Sec. 8, Act of April 26, 1889, P. L., 56.

(55) Sec. 9, Act of April 26, 1889, P. L., 56. See Note 45.

(56) Sec. 10, Act of April 26, 1889, P. L., 56.

(56*) Sec. 11, Act of April 26, 1889, P. L., 56.

ciated themselves together by written articles of association for the purpose of carrying on a co-operative banking business where the profits derived from the business shall, after paying all legitimate expenses, be divided pro rata among the depositors and borrowers of the bank in proportion to their deposits or loans to each class, one-half of the net profits; and a dividend not to exceed six per centum per annum on original subscribed stock may be considered legitimate expenses.⁵⁷

981. Corporate Name.

Such persons so associating may adopt any corporate name indicating their co-operative character and which has not been previously adopted by any other corporation formed under this act: *Provided*, The last three words of such name shall be Co-operative Banking Association, and it shall not be lawful to use in such name either of the words "society" or "company," and that any violation of this proviso by any corporation formed under this act shall render each member thereof personally liable for all its debts.⁵⁸

982. Articles of Association—Recording of Same.

Before any company formed under this act shall commence its business its articles of associations shall be filed and recorded in the office of the Secretary of the Commonwealth and two copies of said articles shall be made which the said Secretary of the Commonwealth shall certify by his official signature and the seal of this Commonwealth as being correct copies of said articles so filed and recorded; one of said certified copies shall be filed and recorded in the office of the clerk of the county in which the office of the association shall be located and the said clerk shall certify by his official signature and seal of his office that the said certified copy of said articles has been filed and recorded in his office, and the other certified copy of said articles shall be held by the association named therein, and the said articles or copies thereof, duly certified by either of the aforesaid officers, may be used as evidence in all courts and places of the incorporation of as well as for or against such association, and the said Secretary of the Commonwealth and the said county clerk shall be paid for said filing and recording

(57) Sec. 1, Act May 18, 1893, P. L., 89.

(58) Sec. 2, Act May 18, 1893, P. L., 89.

and certifying at the rate of ten cents for each hundred words contained in said articles, and after such articles of association shall have been made, filed and recorded as herein required, the persons signing the same and such other persons, partnerships or corporations who shall from time to time, own or possess any share in the stock capital of such association, and their several successors and assigns, shall be deemed and taken to be a body corporate, and by the name and for the purposes mentioned in such articles of association.⁵⁹

983. What Articles of Association Shall Set Forth.

The articles of association shall be signed by the persons originally associating themselves together and shall be acknowledged by at least five of them before a notary public, and shall state distinctly (a) the name by which this association shall be known, (b) the place in this State where its principal office is to be located, (c) the purpose or object for which it is formed, (d) amount of its stock capital, (e) the amount of each share of stock of such capital, such shares not to exceed ten dollars per share, and how such share may be paid for, (f) the amount of capital that will be actually paid in before commencing business; also amount of preferred stock to be assigned to stockholders who may hereafter earn stock from custom dividends, (g) whether, and if so to what extent, loans or deposits of money are to be received for use in its business, (h) the terms upon which persons may become members, (i) on what days in January regular annual meetings of the members are to be held, (j) such other matters not repugnant to this act as may be deemed proper and necessary, (k) the term of its existence not to exceed twenty years, and (l) names of the first associates, their respective residences and the number of shares held by each of them. No such association shall commence business until the financial standing, responsibility and character of the original stockholders shall have been approved and certified by the Superintendent [Commissioner] of Banking.⁶⁰

984. Stock Capital.

The stock capital of any such association shall consist of the

(59) Sec. 2, Act May 18, 1893, P. L., 89.

(60) Sec. 3, Act May 18, 1893, P. L., 89.

amounts standing to the credit of the members on account of the shares allotted to them, certificates of which shall be issued from time to time as shares shall be fully paid up or earned.⁶¹

985. List of Stockholders to Be Exhibited.

It shall be the duty of such company to exhibit in some conspicuous place in its principal office at all times a list of stockholders and the amount of stock held by each stockholder, the amount of stock subscribed or earned at the time of each last annual meeting; also the amount of preferred stock which shall (not) be a liability stock only as it becomes assigned to individual stockholders.⁶²

986. Duty of Auditors.

It shall be the duty of the auditors to audit all books, papers and vouchers of the company annually, or at any time when called upon in writing so to do by the president or any ten of the stockholders, or twenty of the depositors when joined by at least five of the stockholders, and each of these audits shall be rendered in writing which shall give a statement of the assets and liabilities of said company; also a detailed statement of the character and nature of all the notes and securities held by the association, and such statement shall be posted conspicuously in the office.⁶³

987. When Profits to Be Paid Stockholders.

No profits shall be paid out to any stockholder until the total registered amount of stock shall be fully paid in cash, or earned from the net profits of the company.⁶⁴

988. Minors May Be Stockholders, and Deposit and Loan.

It shall be lawful, if the by-laws so provide, for any minor to take and hold shares in, or to make loans or deposits of money to or with any such corporation, and for such association to pay any minor any moneys that may be due to him in respect of any shares, loans or deposits standing in his name, and his receipt therefor shall be in all respects valid in law, but such minor shall

(61) Sec. 4, Act May 18, 1893, P. L., 89.

(62) Sec. 5, Act May 18, 1893, P. L., 89.

(63) Sec. 6, Act May 18, 1893, P. L., 89.

(64) Sec. 7, Act May 18, 1893, P. L., 89.

not be eligible to hold any office in such association though he may be subject to its by-laws and vote at any meeting of its members.⁶⁵

989. Withdrawal of Dividends.

Depositors and borrowers to whom dividends are due shall not withdraw the same, but shall take full paid stock in lieu thereof, until the registered and preferred stock of the company becomes fully paid up, and as each share of stock becomes fully paid up this class of stockholders may become voting members, but each shareholder shall be entitled to but one vote on each share of stock.⁶⁶

990. Directors and Officers—By-laws.

The company shall be controlled by a board of six directors who shall serve for three years, two of which shall be elected annually, and provision shall be made at the first election to elect two to serve one year, two to serve two years and two for three years. Said directors shall elect a president and secretary from their number and said directors shall have full control of all employees and business of the association, subject to by-laws, but no employee shall be a director. The by-laws shall provide rules and regulations for the loaning or discounting of the capital and deposits of the association and the nature of its securities, and no loan shall be made to any individual, firm or company, either singly or collectively, in excess of ten per centum of the deposits of the association at the time of making such loan, and any violation of this provision will render the person or cashier so making the same liable upon his bond and the directors sanctioning such a loan will render them individually liable, unless a protest be entered at the first monthly meeting subsequent to the making of such loan.⁶⁷

991. Election of Auditors.

Two auditors shall be elected annually by the stockholders from their number at their annual meeting in January, and one auditor shall be elected by the depositors from their number on first Mon-

(65) Sec. 8, Act May 18, 1893, P. L., 89.

(66) Sec. 9, Act May 18, 1893, P. L., 89.

(67) Sec. 9, Act May 18, 1893, P. L., 89.

day of each December, notice of which election shall be posted conspicuously in the bank room for at least three weeks prior to the election of such auditor, all of which shall serve for one year.⁶⁸

992. Personal Liability of Stockholders.

The members shall be severally and jointly liable for all deposits, debts for labor, or service of any kind performed for such association, and for any other debts lawfully incurred under the provisions of this act; each of the members shall be liable to twice the amount of his subscribed or earned stock capital, and no more, but no suit shall be brought or any execution issued against any member individually until a judgment be first obtained for such deposits, labor, services, or other lawful debts against such association and execution thereon be returned unsatisfied, in whole or in part, and in case any member shall be compelled to pay any such judgment, or any part thereof, beyond his pro rata liability therefor, he shall have the right to call upon all the members to pay their pro rata share of the same, or up to their pro rata liability therefor, and may sue them jointly, or severally, or any member of them, and recover in such action the ratable amount due from the member or members so sued.⁶⁹

993. Powers.

Any such association may take, hold, lease and convey such real estate as may be necessary for the purpose of its organization, and may sue and be sued in its corporate name, and may submit any matter in dispute to arbitration, and shall have a common seal, which shall not be altered or imitated, and shall bear the corporate name of, together with such device or motto as may be adopted by such association, and such seal shall be impressed upon the articles of association.⁷⁰

994. Employees to Give Bonds.

Any person appointed to any position in any such association requiring the receipt, payment, management or use of money belonging to such association, shall, before entering upon the discharge of his duties, become bound with two or more good and

(68) Sec. 9, Act May 18, 1893, P. L., 89.

(69) Sec. 10, Act May 18, 1893, P. L., 89.

(70) Sec. 11, Act May 18, 1893, P. L., 89.

sufficient sureties, or insurance bonds, in such sum and form as the directors shall require and approve; and the directors may also require from any other employes of such association, bonds with good and sufficient sureties for the faithful discharge of duties.⁷¹

995. Meetings and Elections.

The first meeting of any such association may be called by a notice signed by any two of the associates who signed its articles of association, setting forth the time and place and object of such meetings, such notice to be mailed to the address of each associate, at least four days clear prior to such meeting, and a majority of such associates at such meeting shall be competent to make all such by-laws as they may deem necessary for the proper management of the association, so that any such by-laws are not repugnant to or inconsistent with the provisions of this act, or any law of the State or United States, and to elect such officers as are heretofore provided by this act, and such officers shall hold office until their successors shall have been elected and installed.⁷²

996. Amendment of Articles of Association and By-laws.

Any association may alter or amend its articles of association and may alter or rescind any by-laws, or make any additional by-laws with the consent of the majority of its members present at a special meeting convened for such purpose, but the notice calling such meeting shall set forth fully and clearly the proposed alterations, amendments, rescission or addition: and any alteration or amendment of the articles of association shall be approved, filed, recorded and certified in the same manner as the original articles of association. This act shall take effect immediately.⁷³

997. Reports to Commissioner of Banking—Publication of Summary.

Every corporation, subject to the supervision of the Banking Department, as hereinbefore provided, shall make to the Commissioner of Banking, not less than two reports of its condition dur-

(71) Sec. 12, Act May 18, 1893, P. L., 89.

(72) Sec. 13, Act May 18, 1893, P. L., 89.

(73) Sec. 14, Act May 18, 1893, P. L., 89.

ing each year, according to the form and in the manner prescribed by the said Commissioner, which report shall be verified by the oath or affirmation of the president, cashier or treasurer or other managing officer of such corporation, and attested as correct by the signature of at least three of the directors, trustees or other managers of such corporation.

Each such report of condition shall exhibit, in detail and under appropriate heads, the resources and liabilities of the corporation at the close of business on any past day by the Commissioner specified, and shall be transmitted to the Commissioner within five days (which time in the discretion of the Commissioner of Banking may be extended) after the receipt of a request or requisition therefor from him, and an abstract summary thereof shall forthwith be published by such corporation in a newspaper published in the place where such corporation is located, at least three times, and if there is no newspaper published in such place, then in the newspaper published nearest thereto in the same county; and upon completion thereof proof of such publication shall be furnished to the said Commissioner by such corporation.

The Commissioner of Banking shall also have power to call for special report from any corporation whenever, in his judgment, the same may be necessary to a full and complete knowledge of its condition.

The reports of condition and publication thereof provided for and required in this section shall be in lieu of all reports and of all publication for similar purposes heretofore required by law to be made by such corporations.

In case any such corporation shall fail to make and transmit any of the reports, or furnish such proof of publication required by this act, such corporation shall be subject, at the discretion of the Commissioner of Banking, to a penalty of twenty dollars for each day after the time mentioned above, or the extension thereof by the Commissioner of Banking, for making such report or said publication. Whenever any such corporation shall delay or refuse to pay the penalty herein imposed for a failure to make and transmit a report or furnish proof of publication, the Attorney General, upon request of the Commissioner of Banking, is hereby authorized to maintain an action in the name of the Commonwealth against the delinquent corporation for the recovery of such penalty, and all sums collected by such action

shall be paid into the State treasury and applied upon the expenses of the Banking Department.⁷⁴

998. Examination of Banks by Commissioner of Banking.

It shall be the duty of the Commissioner of Banking, as often as he shall deem proper, to examine or cause to be examined, the books, papers and affairs of each and every corporation subject to supervision as aforesaid, and whenever he shall deem it necessary or proper he shall assign a qualified examiner or examiners to make such examination, and who shall have power to make a thorough examination into all the business and affairs of the corporation in all its departments, and of all its property, assets and resources wherever situated, and in so doing, to examine any of the officers or agents or employes thereof, or any person or officers or employes of any corporation, or any firm in possession of any assets thereof, under oath, or otherwise, and shall make, or cause to be made, in the manner aforesaid, a full and detailed report of the condition of the corporation; and the said corporation shall not be subject to any other visitorial power than such as may be authorized by this act, except such as are vested in the several courts of law. Said commissioner and his deputy and any qualified examiner so as aforesaid appointed are hereby empowered and authorized to administer an oath to any of the persons aforesaid, and any wilful false swearing in any inquiry thereunder shall be perjury, and subject, upon conviction thereof, to the same punishment as provided by existing laws for the punishment of perjury. Upon failure of any of the persons aforesaid to make answer to any inquiries as aforesaid, the Attorney General, upon the request of the Commissioner of Banking, shall make information thereof to the Court of Common Pleas of Dauphin, whereupon said court, after hearing, shall make such order as occasion requires. The compensation of examiners and expenses of examinations provided for by this act shall be paid by warrant drawn by the Auditor General on the State Treasurer, upon requisition made by the Commissioner of Banking, and in order to help pay such expenses all corporations subject to the supervision of the Banking Department (except building and loan associations doing business exclusively within this State), shall annually,

(74) Act of June 24, 1895, P. L., 233, amending Sec. 5, Act of February 11, 1895, P. L., 4.

upon the first Monday of May in each year, pay into the treasury of the State the following amounts in addition to any taxes or fees imposed by existing laws upon such corporations, the sum of twenty-five dollars each, and in all cases of such corporations having capital stock, for each one hundred thousand dollars of capital stock, or fractional part thereof in excess of one hundred thousand dollars, the sum of five dollars shall be paid annually at the time aforesaid; and all such corporations shall pay annually at the time aforesaid, the sum of two cents for each one thousand dollars of assets, and the sum of two cents for each one thousand dollars of trust funds, which it may have. In cases of corporations subject to the supervision of the Banking Department, which have no capital stock, they shall each, in addition to any taxes or fees imposed by existing laws, annually upon the day and month aforesaid, pay into the treasury of the State the sum of twenty-five dollars and for each one hundred thousand dollars of assets, or fractional part thereof in excess of one hundred dollars, annually pay into the treasury of the State the sum of one dollar. And in cases of neglect or refusal of any corporation aforesaid to pay said sums into the State treasury at the time aforesaid, the Auditor General shall settle an account against such corporation for the amounts due and payable under this act, and shall proceed to collect the same in the same way and manner and under the same penalties as are provided for the collecting of taxes and penalties under the existing laws: *Provided, however*, That nothing herein contained shall impose upon building and loan associations, doing business exclusively within this State, the payment of any sum or sums of money whatsoever.⁷⁵

RESERVE FUNDS.

999. Banks, Savings Institutions and Trust Companies Receiving Deposits of Money to Maintain a Reserve Fund.

All banks, banking companies, savings banks, savings institutions, companies authorized to execute trusts of any description and to receive deposits of money, which are now or which may hereafter be incorporated under the laws of this Commonwealth,

(75) Act of May 29, 1901, P. L., 345, amending Sec. 4, Act of February 11, 1895, P. L., 4.

and all trust companies or other companies receiving deposits of money, which may have been heretofore or which may hereafter be incorporated under section twenty-nine of the act approved April twenty-ninth, one thousand eight hundred and seventy-four, entitled "An act for the creation and regulation of corporations," and the supplements thereto, are hereby required to create and maintain a reserve fund, which reserve fund in amount and manner shall be as follows:⁷⁶

1000. Amount of Reserve to Be Maintained by Companies Receiving Deposits Subject to Cheque—What to Consist of.

Every such corporation, receiving deposits of money subject to check or payable on demand, shall, at all times, have on hand a reserve fund of at least fifteen per centum of the aggregate of all its immediate demand liabilities. The whole of such reserve fund may, and at least one-third thereof must, consist of either lawful money of the United States, gold certificates, silver certificates, notes or bills issued by any lawfully organized National Banking Association, or clearing-house certificates, representing specie or lawful money specially deposited for the purpose of any clearing-house association, held and owned by any such corporation as a member of a clearing-house association. One-third, or any part thereof, may consist of bonds of the United States, bonds of the Commonwealth of Pennsylvania, and bonds issued in compliance with law by any city, county, or borough of the Commonwealth of Pennsylvania, and bonds which now are or hereafter may be authorized by law as legal investments for savings banks or savings institutions in Pennsylvania, computed at their par value, and which bonds are the absolute property of such corporation. The balance of said reserve fund, over and above the part consisting of lawful money of the United States, gold certificates, silver certificates, notes and bills issued by any lawfully organized National Banking Association, or clearing-house certificates, representing specie or lawful money specially deposited for the purpose of any clearing-house association, held and owned by any such corporation as a member of a clearing-house association, and the part thereof consisting of bonds, not exceeding the limit above provided, may consist of moneys on deposit, subject to call, in any bank or trust company in the State of Pennsylvania which

(76) Sec. 1, Act May 8, 1907, P. L., 189.

shall have been approved by the Commissioner of Banking, or in any bank or trust company in any other State, located in any city designated as a reserve city by or by virtue of the authority of the revised statutes of the United States and the amendments thereto, which shall have been approved by the Commissioner of Banking.⁷⁷

1001. Amount of Reserve to Be Maintained by Companies Receiving Time Deposits—What to Consist of.

Every such corporation, receiving deposits of money payable at some future time, shall, at all times, have on hand a reserve fund equal to at least seven and one-half per centum of all its time deposits. Such reserve fund may consist in part of lawful money of the United States, gold certificates, silver certificates, notes or bills issued by any lawfully organized National Banking Association, or of clearing-house certificates, representing specie or lawful money specially deposited for the purpose of any clearing-house association held and owned by any such corporation as a member of a clearing house association, and in part of bonds of the United States, bonds of the Commonwealth of Pennsylvania, bonds issued in compliance with law by any city, county, or borough of the Commonwealth of Pennsylvania, or of bonds which are now or hereafter may be authorized by law as legal investments for savings banks or savings institutions of Pennsylvania, computed at their par value, and which bonds are the absolute property of such corporation; or it may consist of moneys on deposit, subject to call, in any bank or trust company in the State of Pennsylvania which shall have been approved by the Commissioner of Banking, or in any bank or trust company in any other State, located in any city designated as a reserve city by or by virtue of the authority of the revised statutes of the United States and the amendments thereto, which shall have been approved by the Commissioner of Banking: *Provided, however,* That not more than one-third of said reserve fund shall consist of bonds as aforesaid.⁷⁸

1002. Definition of "Immediate Demand Liabilities" and "Time Deposits."

"Immediate demand liabilities" shall include all deposits pay-

(77) Sec. 2, Act May 8, 1907, P. L., 189.

(78) Sec. 3, Act May 8, 1907, P. L., 189.

able on demand, and all items in the nature of claims payable on demand; and "time deposits" shall include all other deposits not payable by the contract of deposit on demand.⁷⁹

1003. Where Reserve Is Less Than Lawful Amount—Duty of Commissioner of Banking.

If the reserve fund of any such corporation shall be less than the amount required by this act, such corporation shall not increase its liability, or make purchases of any character otherwise than by dealing in bills of exchange, payable at sight; nor shall it make any dividend of profits until the full amount of the reserve fund required herein has been restored. The Commissioner of Banking shall notify any such corporation, whose reserve fund shall be below the amount herein required, to make good such reserve fund, and if such corporation shall fail, for thirty days after the receipt of such notification, to make good such reserve fund, such corporation may be proceeded against by the said Commissioner of Banking, for this cause, in the same manner as is provided in section nine of the act of eleventh February, eighteen hundred and ninety-five, entitled "An act creating a Banking Department, et cetera."⁸⁰

1004. When Reserve Shall Be Created.

This act shall take effect immediately, except that such reserve fund, above required, shall be created as follows: Three-fifths thereof within thirty days after this act shall have become a law, an additional fifth thereof on the first day of September, nineteen hundred and seven, and the final fifth thereof on the first day of January, nineteen hundred and eight; and thereafter the entire amount of such reserve fund must be, at all times, maintained and kept on hand as hereinbefore required.⁸¹

1005. Banks, Trust Companies, Etc., to Furnish Depositors and Investors with Receipts.

Every bank, trust company, saving fund society, building and loan association, bond and investment company, provident association or company, or any other corporation now, or which may

(79) Sec. 4, Act May 8, 1907, P. L., 189.

(80) Sec. 5, Act May 8, 1907, P. L., 189.

(81) Sec. 6, Act May 8, 1907, P. L., 189.

hereafter be, placed by law under the supervision of the Commissioner of Banking, or which may hereafter be incorporated, whether domestic or foreign, shall furnish each depositor or investor with a receipt in full, by pass book or otherwise, for all moneys received, whether as deposits, dues, or on account of instalments for any trust or investment whatever, which, until refunded, shall constitute a liability upon the part of the corporation, and shall be kept in proper form on books prepared for the purpose.⁸²

1006. Reports to Set Out Amount of Such Liabilities in Full.

In all reports furnished to the Commissioner of Banking, the courts of law, or other supervisory authorities, the aggregate of these liabilities shall be set out in full; and it shall not be lawful to reduce the same for the purpose of concealing unadjusted losses, overdrafts, expense charges, or loans, all of which shall be set out in accounts, separate and apart, on the books and reports until adjusted or charged off, and not debited, in any manner whatever, against deposits or other credits for which the corporation may be liable.⁸³

1007. Amounts Borrowed to Be Set Out in Full on Books and in Reports.

Whenever it may become necessary for any corporation included in this act to borrow money, provided that it already has the legal right so to do, the amount of such liability shall be set out in full on the books and in all reports required by law, together with assets assigned or which may have been guaranteed for a loan or sale or rediscounts. It shall not be lawful to conceal any assets but a record shall be kept of the same.⁸⁴

1008. Penalty.

Violation of any of the provisions of this act shall be deemed a misdemeanor upon the part of any officer or employe of a corporation committing the same, who shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, or imprisonment of one year, or both, at the discretion of the court.⁸⁵

(82) Sec. 1, Act June 12, 1907, P. L., 525.

(83) Sec. 2, Act June 12, 1907, P. L., 525.

(84) Sec. 3, Act June 12, 1907, P. L., 525.

(85) Sec. 4, Act June 12, 1907, P. L., 525.

1009. Commissioner of Banking to Prosecute.

And it shall be the duty of the Commissioner of Banking upon discovery, by report or otherwise, of said misdemeanor to institute criminal proceedings, in form and manner provided by law.⁸⁶

Where depositors or investors neglect to bring their pass books with them when making deposits or payments, a loose receipt or a receipt on a duplicate slip may be furnished to them, and the amounts of their deposits or payments be subsequently entered on their pass books.⁸⁷

(86) Sec. 5, Act June 12, 1907, P. L., 525.

(87) Banking and Investment Companies, Op. Atty. Gen., 10 Dau. Co. Rep., 192 (1907).

CHAPTER XXXIX.

BENEFICIAL AND FRATERNAL ASSOCIATIONS.

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1010. History.

Prior to the year 1893 and subsequent to the adoption of the Constitution of 1874, all beneficial associations were incorporated under paragraph 9, of class 2, of Sec. 2 of the Act of April 29, 1874, which provides for the incorporation of societies for "beneficial or protective purposes to its members from funds collected

therein." In January of 1893, however, the President Judge of the Court of Common Pleas of Dauphin county held, in a learned and exhaustive opinion, in the case of *Commonwealth v. Order of Vesta*, 2 D. R., 254, that there could be incorporated under the said paragraph only local, beneficial societies and associations, with a membership composed of citizens of the particular localities, or members of given congregations or societies, and that when a charter is granted by the Court of Common Pleas to a corporation for such purpose, no authority is or can be conferred upon the corporation to extend its operations by means of agents or so-called subordinate lodges, throughout or beyond the State.

About the time of this decision public attention had been called to the evils arising from the operations of so-called "Get-Rich-Quick Associations," which promised to return to their members, after a given number of payments, amounts much larger than could possibly have been earned by legitimate operations. These facts led to the passage of the two Acts of April 6, 1893, P. L., 7, 10. One of these acts, known as the "Boyer Act," P. L., 10, provides elaborately for the incorporation of beneficial associations, organized upon the fraternal plan, with superior and inferior bodies. Associations providing for the payment of a certain sum after a fixed period (of the Get-Rich-Quick variety) may be incorporated thereunder, but the payment of a certain sum after a fixed period is not a necessary feature of corporations organized under the same. It provides a general plan for the incorporation of fraternal, beneficial societies, orders or associations in Pennsylvania.

The other act, P. L., 7, does not provide for the incorporation of any kind of association, but it defines what fraternal beneficial societies are, permits them to operate on the lodge system, and provides that such associations shall be exempt from the insurance laws of the State. The supreme body of the association is to register in the office of the Commissioner of Insurance within sixty days from the date of the passage of the act, and associations failing to so register are, by section four, prohibited from doing business in Pennsylvania.

The Insurance Department holds that the first named act—the Boyer Act—applies only to "Get-Rich-Quick Associations," and the Department permits associations formed under the second section of the Act of 1874, to register and gain the benefits provided by the other Act of April 6, 1893, P. L., 7, years after the

passage of said act, although it is expressly provided therein that associations must register within sixty days from the passage of the act, in order to gain the benefits conferred. It is evident that this is wrong.

The Boyer Act provides for the incorporation of all beneficial associations, not of a local nature, from and after its date. Previously formed associations may, under its seventh section, accept its provisions and become subject to its regulations.

The other Act of April 6, 1893, P. L., 7, provides that such associations existing at that time, may, by registering within sixty days from the date of the passage of the bill, gain the benefits conferred by the act, and not be subject to the regulations imposed by the Boyer Act. In other words, fraternal beneficial associations in existence on April 6, 1893, might either accept the Boyer Act, and thus become subject to its provisions, or they might, within sixty days, register under the other act of said date, gain the power to create and govern subordinate lodges, etc., and not be subject to the provisions of the Boyer Act. But it is evident that beneficial associations, having the power to create subordinate lodges and operate the same, could only be incorporated in Pennsylvania, after April 6, 1893, under the said Act of April 6, 1893, P. L., 10, known as the "Boyer Act," and that the practice of incorporating such associations under paragraph 9, class 2, Sec. 2 of the Act of April 29, 1874, and then registering under the Act of April 6, 1893, P. L., 7,—although said act expressly limits the time within which such registry can be made to sixty days from the date of the passage of the act—is irregular and illegal, and that such associations have only the powers of local, beneficial associations, and may not create subordinate lodges or operate throughout the State under the lodge system, as held in *Commonwealth v. Order of Vesta*, supra.

It is true that Sec. 1 of said act, P. L., 7, mentions societies "now or hereafter formed," but by Sec. 4, such societies or associations failing to register in the office of the Insurance Commissioner as required by Sec. 2 are prohibited from doing business in Pennsylvania. Sec. 2 requires such registration to be made within sixty days from the date of the passage of the act. So, as no association can operate unless it registers as required by Sec. 2, it is plain that associations not formed on April 6, 1893, or within sixty days thereafter, may not register under said act and hence may not operate in Pennsylvania.

Beneficial associations existing prior to April 6, 1893, which did not accept the Boyer Act nor register under the other act of that date, may not, apparently, operate in the State, under the lodge system, though, if domestic corporations, they may accept the provisions of the Boyer Act at any time.

As above stated, however, the Commissioner of Insurance permits domestic corporations incorporated for benevolent or protective purposes and foreign fraternal beneficial associations of all kinds to register under the first of the Acts of 1903, so that the Boyer Act has become almost a dead letter.

1011. Organisation and Incorporation of Secret Fraternal Beneficial Societies, Orders or Associations.

Whereas, Fraternal beneficial societies, orders or associations have for many years been in existence in this Commonwealth;

And whereas, The said societies when properly managed are beneficial to the laboring and business classes, but by reason of there being no statutory provisions regulating the conduct of their affairs the citizens of this Commonwealth are unprotected from fraudulent schemes and plans and from the mismanagement of officers and promoters of such societies, orders and associations now therefore;

From and after the passage of this act, any fifteen or more persons, nine of whom shall be citizens and residents of this Commonwealth, having associated themselves as a secret fraternal beneficial society, order or association, may be incorporated under the provisions of this act and when so incorporated the said corporation shall have the following powers:

1012. Powers.

First. To have succession by its corporate name perpetually, subject to the power of the General Assembly under the Constitution of this Commonwealth.

Second. To maintain and defend judicial proceedings.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To be capable of taking, receiving, purchasing, holding and transferring real and personal property for the purpose of its incorporation and for no other purpose.

Fifth. To elect, appoint and remove the officers and agents for

the management of its business and carrying out its objects and to allow them a suitable compensation.

Sixth. To make a constitution and general laws for the management of its affairs, not inconsistent with the Constitution and laws of this State, and to alter and amend the same when necessary. When so made, altered or amended, the said constitution and general laws shall be the law governing such society, order or association and its officers, subordinate lodges, councils or bodies and the members in their relations to such society, order or association in all their acts.

Seventh. To provide in the constitution and general laws for the payment to its members of sick, disability or death claims in such amounts as may be authorized and directed by said constitution and general laws. And also to provide for the payment in not less than five years, to members whose beneficiary or distribution period may then expire, of such sum not exceeding the maximum amount named in the beneficiary certificates as the constitution and general laws in force at the expiration of said period may authorize and direct.

Eighth. To collect from its members by admission fees, dues and assessments the funds necessary to carry on its operations and provide for the payment of its benefits, which assessments shall be made in manner and form as provided by its constitution and general laws.

Ninth. To carry on its operations through supreme and subordinate bodies or lodges and to issue beneficiary or relief certificates in accordance with its constitution and general laws.

Tenth. To enter into any obligation necessary for the transaction of its affairs.¹

1013. What Charter Shall Set Forth.

The charter of such intended corporation must be subscribed by five or more persons, citizens of this Commonwealth and shall set forth:

First. The name of the corporation.

Second. The purpose for which it is formed.

Third. The place where its principal office is to be located.

Fourth. The names and residences of the subscribers.

Fifth. The number and names of its officers with the term or

(1) Sec. 1, Act April 6, 1893, P. L., 10.

terms of years for which they have been chosen, and also the name of not less than six directors, managers or members of an executive committee who, together with the president of the society, order or association, shall form a board of directors, managers or executive committee, with the term or terms of years for which each is to serve.²

1014. Publication of Notice of Application for Charter.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed and the intention to make application therefor.³

1015. Granting of Charter—Requisites Before Engaging in Business.

The said certificates of incorporation shall be acknowledged by at least five of those who subscribed to them, before any officer authorized to take the acknowledgments of deeds in the Commonwealth of Pennsylvania, to be their act and deed, and the same being duly certified under the hand and official seal of the said officer shall be presented to a law judge of the county in which the principal office of the corporation is located, accompanied by proof of the publication of the notice of such application, who is hereby authorized to peruse and examine said instrument, and if the same shall be found to be in the proper form and within the purposes named in this act he shall endorse thereon these facts, and shall order and decree thereon that the charter is approved and that upon the recording of the said charter and order the subscribers thereto and their associates shall be a corporation for the purposes and upon the terms therein stated, and said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid and from thenceforth the persons named therein and subscribing the same and their associates and successors shall be a corporation by the name therein given. No such corporation, however, shall engage in business until at least twenty-five persons have subscribed in writing to be beneficiary members therein in the aggregate amount

(2) Sec. 2, Act April 6, 1893, P. L., 10.

(3) Sec. 3, Act of April 6, 1893, P. L., 10.

of at least five thousand dollars, and have each paid in one full assessment in cash amounting in the aggregate to at least one per centum of the amount in which they are beneficiary, nor until a certificate signed and sworn to by three of the highest officers of the corporation has been filed with the Insurance Commissioner stating that the requirements of this section have been complied with.⁴

1016. Reports to Insurance Commissioner.

Every such fraternal society, order or association incorporated under or accepting the provisions of this act shall, on or before the first day of March of each year, make and file with the Insurance Commissioner a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding; such report shall be upon blank forms to be provided by the Insurance Commissioner and shall be verified under oath by the duly authorized officers of such society, order or association and shall be in lieu of all other reports required by any other law; the said report shall contain answers to the following questions:

First. Number of members admitted during the year and number of beneficiary certificates issued.

Second. Amount of benefits named in said certificates.

Third. Number of benefit liabilities incurred during the year.

Fourth. Number of benefit liabilities paid during the year.

Fifth. The amount received from each assessment during the year and the number of assessments levied.

Sixth. Total amount paid members, beneficiaries, legal representatives or heirs.

Seventh. Number and kind of claims compromised or resisted and brief statement of reasons.

Eighth. Does the corporation charge annual or other periodical dues or admission fees.

Ninth. Total amount of salaries paid to officers.

Tenth. Has the society a reserve fund.

Eleventh. If so, how is it created and for what purpose, the amount thereof and how invested.

Twelfth. If the custody and investment of said reserve fund is entrusted to any trust companies or corporations in the Commonwealth of Pennsylvania, state the name of said corporation or

(4) Sec. 4, Act of April 6, 1893, P. L., 10.

corporations, the capital stock of the same, the amount of capital stock paid in, the surplus, if any, and the place of business of said corporation or corporations.

Thirteenth. If the custody and investment of said reserve fund is entrusted to any of the officers of the said secret fraternal beneficial society give the names and residences of the said officers, the names and residences of their sureties, the amount of their bonds and the place or person with whom the said bonds are deposited.

Fourteenth. State the amount of said reserve fund.

Fifteenth. Number of certificates of membership lapsed during the year.

Sixteenth. Number in force at beginning and end of year.

Seventeenth. Date of organization and incorporation and county where incorporated.

All such societies, orders or associations, together with their books, papers and vouchers, shall be subject to visitation and inspection by the Insurance Commissioner or such person or persons as he may at any time designate. Any such society, order or association refusing or neglecting to make such report to the Insurance Commissioner may, upon the suit of the Commonwealth, be enjoined by the Court of Common Pleas of Dauphin county from carrying on any business until such report shall be made.⁵

1017. Officers to Give Bonds.

Every officer of any corporation accepting the provisions of or doing business under this act shall give bond with sufficient surety for the faithful performance of his duties, and for the safe custody of the moneys and securities and other property which may be in his possession and control, which bond shall be for such amount as the board of directors, managers, executive committee or supreme governing body may require: *Provided, however, That* when the reserve funds of any corporation organized hereunder or accepting the provisions hereof are deposited for investment with any trust companies or financial corporations, chartered by the Commonwealth of Pennsylvania, the officers of said corporation so depositing its reserve funds need not be bonded for any of the moneys or securities in the custody or possession of said trust company or financial corporations. The Insurance Commissioner shall have the power and authority at all times to examine said

(5) Sec. 5, Act of April 6, 1893, P. L., 10.

bonds at the place of business of the corporation, and there to inquire of and receive answers from the officers of the corporation as to their knowledge of the financial standing of the surety or sureties on any of said bonds.⁶

1018. Acceptance of Act by Associations Heretofore Incorporated.

Any beneficial society, order or association heretofore incorporated under any act of the General Assembly of the Commonwealth of Pennsylvania for beneficial or protective purposes to its members from funds collected therein, and which has been carrying on the operations of a secret fraternal society, order or association, and any unincorporated society, order or association which has been carrying on said operations, shall have and enjoy the rights and privileges conferred by this act, upon filing with the Insurance Commissioner a certificate or declaration signed by its supreme officers accepting the provisions of this act and agreeing to abide by all the requirements herein made: *Provided, however,* That nothing in this act shall apply to any incorporated or unincorporated fraternal beneficial society not accepting the provisions hereof or be so construed as to compel any such society to accept its provisions or become incorporated thereunder.⁷

1019. Fraternal Beneficial Societies—Definition.

It shall be lawful for any corporation, society or voluntary association now or hereafter formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit, to have and create subordinate lodges with ritualistic form of work and a representative form of government and to issue certificates of membership, make provisions for the payment of benefits in case of sickness, disability or death of its members, subject to their compliance with its constitution and laws in which the fund from which the payment of such benefits shall be made, and the expenses of such association shall be defrayed (and) shall be derived from assessments or dues collected from its members, and in which the payment of death benefits shall be to families, heirs, blood relatives, affianced husband or affianced wife of or to persons dependent upon the member.⁸

(6) Sec. 6, Act of April 6, 1893, P. L., 10.

(7) Sec. 7, Act of April 6, 1893, P. L., 10.

(8) Sec. 1, Act April 6, 1893, P. L., 7.

1020. To Be Exempt from Insurance Laws of the State.

Such corporation, society or voluntary association now existing, or hereafter formed or organized, shall be and is hereby declared to be a fraternal beneficial society and shall be governed by this act, and shall be exempt from the provisions of insurance laws of this State, and no law hereafter passed shall be applied to them unless they be expressly designated therein. All funds of such fraternal beneficial societies shall be exempt from the State tax on money at interest.⁹

1021. Copy of Constitution to Be Filed with Commissioner of Insurance—Registration.

Within sixty days after the passage of this act all supreme or grand or other bodies which may be known to constitute the head of any fraternal beneficial society doing business within this Commonwealth, as provided in the first section of this act, shall file through its proper officers or representatives with the Insurance Commissioner a copy of their constitution and general laws, and annually any alterations, changes or amendments, whose duty it shall be to register them without charge in the Insurance Department as fraternal beneficial societies, and when so registered they shall be exempt from any and all fees and taxes imposed by existing laws upon insurance companies reporting to said department.¹⁰

1022. Reports to Insurance Commissioner.

The executive officers of each such supreme or grand lodge of any fraternal beneficial society doing business in this Commonwealth shall, on or before the first day of March of each year, make a report under oath on a blank to be provided by the Insurance Commissioner, which report shall be printed as a part of his annual report of the operations of said society in this Commonwealth for the preceding fiscal year ending December thirty-first, in form as follows:

I.

Name of the society or association, with its principal office or place of business.

(9) Sec. 1, Act April 6, 1893, P. L., 7.

(10) Sec. 2, Act April 6, 1893, P. L., 7.

II.

INCOME.

- First. Annual dues.
- Second. Assessments.
- Third. All other sources.
- Fourth. Total income during the year.

III.

EXPENDITURES.

- First. Losses and claims paid.
- Second. Salary and other compensations of officers.
- Third. Rent.
- Fourth. Office expenses.
- Fifth. All other expenditures.

IV.

ASSETS.

- First. Real estate.
- Second. Loans on mortgages.
- Third. Bonds and stock owned absolutely.
- Fourth. Cash in office or bank.
- Fifth. Due from members on assessments called or pending collection.
- Sixth. All other assets (stating character).

V.

LIABILITIES.

- First. Losses and claims unpaid.
- Second. Salaries due and unpaid.
- Third. Borrowed money.
- Fourth. All other liabilities (stating character).

VI.

EXHIBIT OF MEMBERSHIP.

First. Total members in good standing December thirty-first, one thousand ——— hundred and ———. Number.

Second, Total number of members received by initiation or re-admission during the year. Number.

Third. Total. Number.

Fourth. Deduct members retiring by withdrawal or suspension during the year. Number.

Fifth. Deduct members who have died during the year. Number.

Sixth. Total number in good standing December thirty-first, one thousand ——— hundred and ———. Number,¹¹

1033. Penalty for Failure to Register—Insurance Commissioner to Have no Control, Except as Herein Stipulated—Exemptions.

Any fraternal beneficial society failing to register as required by the second section of this act, or to make the report required by the third section of this act, shall be prohibited from doing business in this State, and the officers of societies violating these requirements shall be deemed guilty of a misdemeanor and upon conviction shall be fined not exceeding one hundred dollars for each offense: *Provided always*, That nothing in this act shall be so construed as to give the Insurance Commissioner any supervision or authority in any matter or thing whatsoever pertaining to the business of any fraternal society as prescribed in the first section of this act, other than is expressly provided for in the second and third sections hereof: *And provided further*, That all beneficial and relief associations formed by churches, societies, classes, firms or corporations with or without ritualistic form of work, the privileges and membership in which are confined to the members of such churches, societies or classes and to the members and employes of such firms or corporations, shall be exempt from the provisions of this act: *And provided further*, That this act shall not apply to any secret fraternal beneficial society, order or association which has for one of its objects the payment of a

(11) Sec. 3, Act April 6, 1893, P. L., 7.

sum not exceeding a certain amount at the expiration of a fixed period.¹²

The Insurance Commissioner may not exclude from doing business in Pennsylvania a foreign fraternal beneficial association because its name closely resembles that of another such association already authorized to operate in the State.^{12*}

1094. Societies for Beneficial or Protective Purposes May Pay Certain Benefits.

It shall be lawful for any corporation incorporated under the provisions of the ninth paragraph of section two of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, namely: "The maintenance of a society for beneficial or protective purposes to its members from funds collected therein," to pay, and to enter into contracts to pay, to each member thereof, money or benefits not exceeding ten dollars per week in the event of sickness, accident or disability, or to pay not exceeding the sum of two hundred and fifty dollars in the event of death, or to pay money or benefits in the event of any or all of such contingencies: *Provided*, That the provisions of this act shall not apply to fraternal, benevolent, charitable or secret societies issuing beneficiary certificates, or paying benefits to their membership through the lodge system, or to insurance or relief associations formed by or for the exclusive benefit of employes of corporations or firms, or formed by or for the exclusive benefit of members of any religious corporation or association, but shall only apply to companies employing agents and doing a general public insurance business.¹³

Under the Act of May 23, 1891, P. L., 107, a beneficial association which does not operate through the lodge system and which is not formed for the benefit of the employes of a corporation or firm, or for the exclusive benefit of any religious body, may make contracts with its members to pay the same not exceeding two hundred and fifty dollars in the event of death.¹⁴

Beneficial associations having authority, under the Act of May

(12) Sec. 4, Act April 6, 1893, P. L., 7.

(12*) *Maccabees v. Martin*, 32 Pa. C. C., 58 (1906).

(13) Act of May 23, 1891, P. L., 107.

(14) *Com. v. Keystone Benefit Assn.*, 171 Pa., 465 (1895).

23, 1891, P. L., 107, to issue limited policies of insurance to members only, cannot issue policies of insurance to minors.¹⁵ Policies may, however, be issued to minors of eighteen years of age and upwards, by fraternal and beneficial societies under the provisions of the act given in Sec. 1026, *infra*.

1025. To Whom Benefits Shall Be Paid Where the Beneficiary Dies Before the Insured.

From and after the passage of this act, any benefit certificate or certificates now or hereafter issued by any corporation, society or voluntary association, now or hereafter formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit, when any person or persons shall have been designated by the members as his beneficiary or beneficiaries shall die prior to the death of the member, without any new designation and no provision is made by the laws of the society as to who shall take the share designated to go to such deceased beneficiary or beneficiaries, in all such cases the amount or share designated to be paid to such deceased beneficiary or beneficiaries, shall be payable to the widow and children of such deceased member, if any, share and share alike, and in case none shall be living, then to such other relative of such deceased member, and in such proportions as they are entitled to receive under a distribution of the personal estate by the laws of the domicile of such member.¹⁶

1026. Minors May Be Members of Beneficial Associations.

From and after the passage of this act it shall be lawful for minors, who have attained the age of eighteen years, to make all needful contracts to become members of fraternal and beneficial societies lawfully organized and doing business under the laws of this Commonwealth.¹⁷

1027. Incorporation of Beneficial Associations.¹⁸

The charter of a beneficial association must contain a clause re-

(15) *Com. v. People's Mut. Life & Relief Assn. of York*, 2 Dauph. Co. Rep., 267 (1896).

(16) Act of May 24, 1893, P. L., 126.

(17) Act of June 24, 1897, P. L., 204.

(18) See Sec. 1010.

stricting the application of its funds to the objects declared to be the purpose of the association.¹⁹

An association organized to pay premiums to members upon marriage is not a beneficial association within the meaning of the Act of April 29, 1874.²⁰

The objects of the Junior Order of United American Mechanics, which are to maintain and promote the interests of Americans and shield them from the depressing effects of unrestricted immigration, to assist them in obtaining employment, etc., are not such as are contemplated by Cl. 9, Class 2, of Sec. 2 of the Act of April 29, 1874, except perhaps the maintaining of a sick and funeral fund and an orphans' home.²¹

1028. Nature of Beneficial Associations.

The object of a beneficial association is not indemnity or to secure against loss. Its design is to accumulate a fund from the contribution of its members "for beneficial or protective purposes," to be used in their own aid or relief, in the misfortune of sickness, injury or death. The benefits, though secured by contract, and for that reason to a limited extent assimilated to the proceeds of insurance, are not so considered. Such associations have no capital stock, are not operated for profit and are of a philanthropic or benevolent character.²²

1029. When Beneficial Associations Are and Are Not Insurance Companies.

Beneficial associations are not insurance companies within the meaning of the Act of May 11, 1881, P. L., 20, requiring copies of applications and by-laws to be attached to insurance policies,²³ nor are they taxable as insurance companies.²⁴

(19) *German General Beneficial Association*, 30 Pa., 155 (1858).

(20) *In re Quaker City Marriage Benefit Assn.*, 10 W. N. C., 467 (1881).

(21) *In re Gratitude Council, Jr. O. U. A. M.*, 24 Pa. C. C., 449 (1900).

(22) *Com. v. Equitable Beneficial Assn.*, 137 Pa., 412 (1890); *Ins. Com'r v. National Mutual Aid Assn.*, 1 York, 149 (1880).

(23) *Beatty v. Supreme Commandery, O. of G. C.*, 154 Pa., 484 (1893); *Dickinson v. Grand Lodge, A. O. U. W.*, 159 Pa., 258 (1893); *Dunlevy v. Supreme Lodge, S. of H.*, 11 Pa. C. C., 477 (1892); *Liethgow v. Supreme Tent, of the Kts. of Maccabees*, 35 W. N. C., 493 (1895).

(24) *Easton v. Temperance Mut. Benefit Assn.*, 5 Lanc. L. R., 349 (1887); 1 North. Co., 269.

But it has been held that an endowment association which collected monthly assessments from its certificate holders and paid sick benefits therefrom and used the surplus to retire outstanding certificates in the order of priority, at a fixed amount, was not a beneficial association,²⁵ and it was also held that an association which agreed to pay fixed amounts in case of sickness, in consideration of the monthly payment of specified sums, with a provision for forfeiture in case of non-payment of premiums was engaged in life insurance.²⁶

An association which indemnifies persons against loss for a stipulated consideration, payable at fixed periods, and which does not provide for the accumulation of a fund "from the contribution of members," nor provide for the distribution of a surplus among members, is an insurance company within the meaning of the process Acts of April 24, 1857, P. L., 318, and April 8, 1868, P. L., 70.²⁷

1080. Associations Insuring Selected Lives for Premiums Calculated on Expectation of Life of the Insured.

Numerous fraternal associations are doing business in Pennsylvania which insure only selected lives, among their membership, in consideration of the payment of a premium, the amount whereof is calculated upon the basis of the expectation of life of the insured. These differ from ordinary life insurance companies, in the nature of their business, only in that the beneficiaries of their policies must be the children or wife of the insured (which is ordinarily the case in the business of insurance companies) and that they are not nominally conducted for profit, though they are conducted to the profit of their officers, at least to the extent of their salaries. It would seem that such associations should be considered as insurance companies and required to comply with the laws regulating the same.

1081. Officers.

A treasurer who has embezzled the funds of a beneficial asso-

(25) *National Indemnity & Endowment Co.'s Case*, 142 Pa., 450 (1891).

(26) *Com. v. Mut. Aid Union & Beneficial Association*, reported as a note to *Com. v. Equitable Ben. Assn.*, 137 Pa., 414-15.

(27) *Lane v. Amer. Relief Association*, 25 Pa. C. C., 129 (1901).

ciation cannot set off a claim for sick benefits against the amount embezzled.²⁸

The sureties of the treasurer of a beneficial association, who holds over after the expiration of his term, are liable for a defalcation occurring during the time in which he holds over.²⁹

1032. Evidence of Membership.³⁰

Members may testify, in supplement to the books of an association, to show that a member was not in good standing at the time of his death.³¹

The evidence of a paymaster of a railroad company that the membership fees and dues of an alleged member in a relief association had been deducted from his pay, was held not sufficient to establish membership when unsupported by other evidence.³²

1033. Dissensions in Beneficial Associations.

Where there were two sets of officers and the court found the evidence so conflicting that it could not decide which was the legal set, it ordered matters to remain in statu quo until an election could be held for new officers, under direction of the Supreme Lodge of the order, the authority of which was acknowledged by both parties.³³

The majority of the members of a subordinate division of a beneficial association made up of numerous subordinate branches, cannot carry the division and its property over to another association against the will of the minority.³⁴

1034. Anticipation of Payment of Dues.

Where members of an association anticipate the payment of their dues, it is the duty of the officer receiving them to pay them into the treasury of the association, and by so doing he incurs no responsibility to the members from whom he receives them, in case of the insolvency of the association before the arrival of the

(28) *Fields v. Kershaw*, 13 Lanc. Bar., 68 (1881).

(29) *Black v. Oblender*, 135 Pa., 526 (1890).

(30) See Chapter IX, Membership in Corporations.

(31) *Hamil v. Supreme Council of Royal Arcanum*, 152 Pa., 537 (1893).

(32) *B. & O. Employes Relief Assn. v. Post*, 122 Pa., 579 (1888).

(33) *Order of Solon v. Folsom*, 161 Pa., 225 (1894).

(34) *Gorman v. O'Connor*, 155 Pa., 239 (1893); *Washington v. White*, 44 Pitts. L. J., 338 (1897).

time at which the dues mature. If the members have any equity for the return of such payments, they must assert it individually, on the settlement of the account of the assignee of the insolvent corporation.³⁵

1035. Corporate Acts Performed Outside of Pennsylvania.

The rule that a corporation must perform its corporate acts within the sovereignty that gave it life, does not apply to the action of a beneficial association incorporated in Pennsylvania, and having subordinate councils throughout the United States, in levying a per capita tax on the members, at a corporate meeting held outside the limits of Pennsylvania, such a tax being within the corporate powers and necessary to provide revenue upon which the existence of the corporation depends.³⁶

1036. By-Laws.

The action of original corporators in adopting by-laws giving to themselves, as officers of the society, the right to fill all vacancies in the board of directors and other officers, and to fix their own salaries, is not warranted by charter or by law.³⁷

Where the by-laws of a beneficial association are changed after a member becomes such, reducing the benefits members are entitled to receive, such change is binding on the member.³⁸ But where the member becomes entitled to the benefit before the by-law is changed, he is entitled to benefits at the original rate during the incapacity which so originated before the change of by-law.³⁹

1037. Members of Beneficial Associations Not Individually Liable.

Members of lodges of the order of Odd Fellows, Knights of Pythias and other organizations paying periodical or funeral benefits, shall not be individually liable for the payment of periodical or funeral benefits or other liabilities of the lodge or other organi-

(35) *Garrett v. Guarantee Trust & Safe Deposit Co.*, 29 W. N. C., 33 (1891).

(36) *Derry Council, No. 40, Jr. O. U. A. M. v. State Council*, 197 Pa., 473 (1900).

(37) *Com. v. United Brethren Mutual Aid Society*, 16 Pa. C. C., 145 (1895).

(38) *St. Patrick's Benef. Assn. v. McVey*, 92 Pa., 510 (1879).

(39) *Becker v. Berlin Beneficial Assn.*, 144 Pa., 232 (1891).

zation but that the same shall be payable only out of the treasury of such lodges or organizations: *Provided*, That the provisions of this act shall only apply to unincorporated associations: *And provided further*, That this act shall not apply to any liability heretofore incurred.⁴⁰

1038. Foreign Beneficial Associations.⁴¹

A beneficial association incorporated in another State, which employs agents in Pennsylvania to solicit members, collect assessments and adjust and pay claims is doing business in the State, and is subject to service of process.⁴²

(40) Act of April 28, 1876, P. L., 53. This act is constitutional. *Sparks v. Husted, et al.*, 5 D. R., 189 (1896).

(41) For service of process on, see Sec. 601.

(42) *McCullough v. Railway Mail Assn.*, 33 Pa. C. C., 529 (1907).

CHAPTER XL.¹

BOOM AND LOGGING COMPANIES AND COMPANIES FOR THE STORAGE, TRANSPORTATION AND FURNISHING OF WATER AND WATER POWER.

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| 1041. Applications for Charters
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Logging Companies Incorporated
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| | 1049. Decisions as to Boom and
Logging Companies Incorporated
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1039. Incorporation Authorized.

Corporations may be formed under the provisions of this act . . . XVIII. . . . For the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom; the construction of dams in any stream, and the driving and floating of saw logs, lumber and timber on and over any stream, not exceeding thirty-five miles in length from their source, by the usual methods of driving and floating logs, timber and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats. . . .²

(1) See Chapter on Water Companies for discussion of different classes of water companies and their respective powers.

(2) Act of July 9, 1901, P. L., 624, amending the Act of June 10, 1893, P. L., 412, which amended the Act of May 21, 1889, P. L., 259, amending the Act of June 22, 1883, P. L., 156, amendatory to the Act of April 10, 1879, P. L., 20, amending Paragraph 2, of the Second Section of the Act of April 29, 1874, P. L., 73.

1040. Statement of Purpose in Charter.

Statement of purpose for companies for the storage, transportation and furnishing of water and water power:

The supply, storage or transportation of water and water power for commercial and manufacturing purposes in [description of territory].³

1041. Applications for Charters Must Be First Made to the Pennsylvania Water Supply Commission.

Applications for charters of corporations for the supply, storage and transportation of water and water power must be first made to the Pennsylvania Water Supply Commission.⁴

1042. Powers.

Corporations organized for the purpose of erecting reservoirs for the storage of water, construction of dams, transmission of power and the driving and floating of logs, timber and lumber on streams not exceeding thirty-five miles in length from their source, shall have the power to clear out, improve and use any stream, or the head of any stream, not exceeding in length thirty-five miles from the source, shall have power to clear out, improve and use any stream or the head of any stream, not exceeding in length thirty-five miles from its source, to purchase dams and erect new dams thereon, may straighten, deepen, crib and widen such stream, or the head of any stream for the distance aforesaid, as they deem proper, and may generally use and manage the streams and the head of streams for the distance aforesaid and their improvements thereon for the floating of logs, lumber and timber thereon, by both natural and artificial floods, in their discretion, but in such manner as not to obstruct the descending navigation by rafts and boats: *Provided*, That in case where the heads of streams more than thirty-five miles in length are improved under the provisions of this act, no tax or tolls shall be charged on timber or logs passing through, banked or floated from below such improvement: *Provided further*, That the corporation owning such improvements shall not be required to operate or furnish the use of such improvements for driving or

(3) As to the territory which may be embraced in the charters of such corporations, see the chapter on Water Companies.

(4) See the chapter on Water Companies.

floating timber or logs, unless the owners of such timber or logs consent to pay the tolls provided for in this act: *Provided further*, That a majority of the stock in any such corporation shall at all times be held by the persons owning lands drained by such streams.⁵

1043. Improvements of Boom and Logging Companies to Be for the Public Benefit—Tolls.

The improvements of corporations organized for the floating of logs, lumber and timber as aforesaid, and the use of the streams so to be controlled by them, shall be for the public benefit, so that all persons shall have the right to have their logs, lumber and timber floated in such streams, with the aid of said improvements, subject, nevertheless, to the payment of such reasonable tolls and charges therefor, as said corporation or its proper officers may require, not in any case to exceed ten cents per thousand feet board measure: *And provided*, That the control of such improvements shall, at all times, be in the hands of said corporation.⁶

1044. Compensation for Damages to Be Made Before Operations Are Begun—Eminent Domain.

Companies incorporated for the purpose of floating and driving logs, timber and lumber on and over any stream shall, before commencing the driving or floating on or over any stream, agree with the owner or owners of any mill or saw mill dams upon such stream or streams, and the owners of lands adjoining such streams, for compensation for any damages that may be occasioned by reason of the erection of splash dams on said streams, and the driving and floating of logs, timber and lumber thereon; and when such company cannot agree with the owner or owners for such dams, or riparian owners for the damages aforesaid, by reason of incapacity or otherwise, then the damages done or likely to be done to such owner or owners, shall be assessed, and the right of possession and use of the such stream or streams acquired under the forty-first section of the act to which this is a supplement.⁷

(5) Sec. 2, Act of June 10, 1893, P. L., 412, amending acts as stated in note 2.

(6) Sec. 3, Act June 22, 1883, P. L., 156.

(7) Sec. 4, Act June 22, 1883, P. L., 156.

The franchise of a logging company does not necessarily imply the acquisition of the title to the dams existing on the streams on which it is authorized to operate. The title of a lumber company to a dam is not divested by the incorporation, without more, of a logging company "for the purpose of the construction of dams" on the same stream.⁸

1045. Bond of Indemnity to Be Filed.

Before any such corporation for the floating of logs, lumber and timber shall enter upon and exercise any control over any stream under this act, they shall file in the Court of Common Pleas of the proper county a bond in such sum and with such sureties as shall be approved by the said court, or by the president judge thereof in vacation, conditioned to indemnify all and every person whose property may be injured by reason of the construction and operation of the improvements of said corporation.⁹

1046. Property Not to Be Taken for Private Use.

Nothing in this act contained shall be held to authorize the taking or injuring of private property for a private use, nor to affect in any way any suit at law or in equity now pending.¹⁰

1047. Tax on Logs Repealed.

The tax on logs imposed by the Act of April 6, 1870, P. L., 52, was repealed by Sec. 36 of the Act of June 1, 1889, P. L., 438.

1048. Decisions as to Boom and Logging Companies Incorporated Under the Act of 1874.

Where a company incorporated under the supplement to the Act of 1874, of June 22, 1883, P. L., 156, for the drifting or floating of saw-logs, etc., has filed a bond under the provisions of Sec. 5 of said supplement, it is not required either to agree with the individual riparian owners as to damages or to file bonds as security for their payment, under the provisions of Sec. 4 thereof.¹¹

In an action by such company to collect toll for logs floated,

(8) *Emery Lumber Co. v. Sullivan County*, 28 Pa. Super. Ct., 451 (1905).

(9) Sec. 5, Act June 22, 1883, P. L., 156.

(10) Sec. 6, Act June 22, 1883, P. L., 156.

(11) *Genesee-Fork Impt. Co. v. Ives*, 144 Pa., 114 (1891).

the right to recover cannot be defeated by evidence that little, if any, improvement of the stream was made by the plaintiff, or that defendant floated his logs upon the natural state of water, without assistance from plaintiff's splash dams.¹²

Nor in such action can the defendant question the reasonableness of the tolls charged. So long as the company keeps within the limit fixed by the statute, its right to collect the tolls cannot be defeated, nor its discretion to fix the amount questioned collaterally.¹³

Under the Act of May 21, 1889, P. L., 259, Sec. 2, amending the Act of June 22, 1883, P. L., 156, Sec. 2, a boom company is not confined to its statutory remedy for the collection of tolls, by the stoppage of logs, but has the additional remedy of an action in *assumpsit*.¹⁴

1049. Decisions as to Boom and Logging Companies Incorporated Under Special Acts.

Where the charter of a boom company required it at all times to keep its boom sufficiently strong to secure all the lumber contained therein, held, that it was liable for any loss occasioned by the insufficiency of the boom, and that upon proof of loss such insufficiency would be presumed without evidence of negligence, but that if such loss occurred from the unavoidable dangers of the river, or through inevitable accident, the company was not liable.¹⁵

Two boom companies having two separate booms on the same river were consolidated. The charter of each provided as above, and by the act of consolidation the consolidated company was subject to the restrictions in the original charter. Held, that the lower boom did not have to be constructed so as to hold logs escaped by act of God from the upper boom, but only strong enough to secure the logs intended for it.¹⁶

The proviso to Secs. 3 and 7 of the Act of March 29, 1849, P. L., 245, incorporating the West Branch Boom Company, rela-

(12) *Genesee-Fork Impt. Co. v. Ives*, 144 Pa., 114 (1891).

(13) *Genesee-Fork Impt. Co. v. Ives*, 144 Pa., 114 (1891); *Bennett's Branch Impt. Co.'s Appeal*, 65 Pa., 242.

(14) *West Branch Logging Co. v. Strong, Deemer & Co., Limited*, 196 Pa., 51 (1900).

(15) *Brown v. Susquehanna Boom Co.*, 109 Pa., 57 (1885).

(16) *Brown v. Susquehanna Boom Co.*, 109 Pa., 57 (1885).

tive to the manner of constructing the booms, etc., with reference to the free passage and unobstructed navigation of the river, is not to be so construed as to forbid the temporary detention of logs, marked as intended to be driven below the boom, where it was not reasonably possible to separate and pass them at once.¹⁷

Where an addition to a boom was built in 1869, and used continuously thereafter, it is too late for property owners injured thereby, who acquiesced until 1883, to assert that the boom company had no right under its charter to build the addition in the way in which it was built.¹⁸

The Act of April 3, 1859, P. L., 1860, p. 863, authorized the Bald Eagle Boom Company to "erect and maintain on the south side of the Bald Eagle Creek such boom or booms with piers as may be necessary for the purpose of stopping and securing logs . . . upon said creek, and such piers, side branches or shore booms as may be necessary for that purpose," with a proviso that the boom should be so constructed as "not to impede the navigation of said creek." Upon a bill in equity to restrain the building and maintaining of piers by said company, north of the middle line of said creek, held, that this act authorized the construction of a boom by said company on the south side of the creek, using that shore as one side of the enclosure, and the erection of the necessary piers to complete the inclosure on the other side, and that the only limitation as to the location of such piers was that they should not be built so as to interfere with the navigation of the creek.¹⁹

(17) *West Branch Boom Co. v. Penn Joint L. & L. Co.*, 121 Pa., 143 (1888), citing *Bald Eagle Boom Co. v. Sanderson*, 81* Pa., 143; *Whittaker v. Canal Co.*, 87 Pa., 34; *West Branch Boom Co. v. Dodge*, 31 Pa., 285, defectively reported.

(18) *Power's Appeal*, 125 Pa., 175 (1889).

(19) *Power's Appeal*, 125 Pa., 175 (1889).

CHAPTER XLI.

BOULEVARD COMPANIES.

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| 1050. Boulevard Companies May be Incorporated. | 1057. Opening of Boulevard and Erection of Tollgates. |
| 1051. What Additional Information to be Stated in Charter. | 1058. Appointment of Toll Gatherers—Rates of Toll. |
| 1052. Powers of Directors. | 1059. Agreement of State as to Exemption of Boulevard Property from the Exercise of the Right of Eminent Domain. |
| 1053. Directors to Keep Accounts and Submit Them to Stockholders. | 1060. Existing Plank Road and Turnpike Companies May Accept Provisions of Act. |
| 1054. May Lease Turnpike and Plank Roads. | 1061. Street Railways on Boulevards. |
| 1055. Have the Right of Eminent Domain. | |
| 1056. Bridges—Width of Boulevard. | |

1050. Boulevard Companies May Be Incorporated.

Corporations of the second class may be formed and created in the manner provided for in the act to which this is a supplement, [Act of April 29, 1874,] and with all the rights and powers therein granted for the purpose of constructing and maintaining boulevards in this Commonwealth, the capital of which company shall not be less than ten thousand dollars per mile for each mile of road constructed.¹

1051. What Additional Information to Be Stated in Charter.

The charter of a boulevard company shall also state:

First. The kind of improved roadway or boulevard to be constructed.

Second. The places from and to which such improved roadway or boulevard is intended to run.²

All boulevard companies incorporated under this statute shall, from the date of the letters patent creating the same, be governed, managed and controlled as follows:

(1) Sec. 1, Act June 25, 1895, P. L., 382.

(2) Sec. 2, Act June 25, 1895, P. L., 382.

1052. Powers of Directors.

The directors of such corporation shall have full power and authority to appoint, agree and contract with such engineers, superintendents, artists, laborers and other persons as they may think necessary to make and construct such boulevards, and collect the tolls hereinafter authorized, and fix their compensation; to ascertain the times, manner and proportions in which the stockholders shall pay the amount of their respective shares in order to carry on their works, and to do and transact all other acts, matters or things as by the by-laws, orders and regulations of such incorporation shall be entrusted to them.³

1053. Directors to Keep Accounts and Submit Them to Stockholders.

Directors of every corporation shall keep full and just accounts, as well of all moneys received by them as of those paid out and expended in the prosecution of their work, and shall at least once in every year submit their books and accounts to a general meeting of the stockholders.⁴

1054. May Lease Turnpike and Plank Roads.

It shall be lawful for such corporations to obtain by purchase or lease, and for any turnpike company or plank road company to sell or lease to any such boulevard company, any turnpike or plank road or any portion of either thereof owned by said turnpike company or plank road company, upon such terms as may be authorized by a majority in value of the owners of the stock in the respective companies.⁵

1055. Have the Right of Eminent Domain.

Such boulevard companies shall have the right of eminent domain for the purpose of taking and acquiring any land necessary for the location and construction of any such boulevard, or for the purpose of widening or straightening thereof upon first however giving bond and proceeding as required by the forty-first section of this act.⁶

(3) Clause 1, Sec. 2, Act June 25, 1895, P. L., 382.

(4) Clause 2, Sec. 2, Act June 25, 1895, P. L., 382.

(5) Clause 3, Sec. 2, Act June 25, 1895, P. L., 382.

(6) Clause 4, Sec. 2, Act June 25, 1895, P. L., 382. The 41st Section of the Act of April 29, 1874, is referred to.

1056. Bridges—Width of Boulevard.

The directors of such corporation shall have the power to erect good and sufficient bridges over all streams of water crossed by their boulevard wherever the same shall be found necessary, and shall cause a boulevard to be laid out, not exceeding one hundred feet in width, and not less than fifty feet in width, and shall cause at least thirty feet of such width, inclusive of gutters, ditches or drains, to be made a good compact driving road of which twenty-five feet in width shall be constructed of stone, gravel or other proper and convenient material as much as the nature of the ground may require, in such manner as will admit of an even surface; and said bridges shall not be constructed so as to obstruct the navigation of any stream declared a public highway.⁷

1057. Opening of Boulevard and Erection of Toll Gates.

Whenever such corporation shall have finished five miles or more of such improved roadway or boulevard, or if the entire boulevard shall be of a shorter distance, then, when completed, the Court of Quarter Sessions of the proper county shall appoint forthwith three careful, judicious and disinterested persons to view and examine the same, and report, on oath or affirmation, whether the said boulevard is so far constructed in a competent and workmanlike manner, and also the actual amount expended by said company in the construction of said boulevard and in the purchase of any turnpike or plank road, the lands for the use of said boulevard company and damages paid in accordance with clause four of section two hereof; and if their report shall be in the affirmative as to the competent and workmanlike manner of construction, then the said court shall so decree and shall enter its decree as to the amount expended as aforesaid, and the said court shall, by its orders under seal of the court, permit and suffer said corporation to erect so many gates upon and across the said road as will be necessary and sufficient to collect from all persons otherwise than on foot, the same tolls as is herein authorized and granted.⁸

1058. Appointment of Toll Gatherers—Rates of Toll.

When such corporation is licensed in manner aforesaid, it shall

(7) Act April 28, 1899, P. L., 71, amending Clause 5, Sec. 2, Act June 25, 1895, P. L., 382.

(8) Clause 6, Sec. 2, Act June 25, 1895, P. L., 382.

and may be lawful for them to appoint such and so many toll gatherers as they shall think proper to collect and receive of and from all and every person or persons using the said road a toll of rates hereinafter mentioned, and to stop any person riding, leading or driving any horses, cattle, hogs, sheep, cattle, carriages, sulky, chaise, phaeton, cart, wagon, wain, sleigh, sled or any other carriage of burden or pleasure from passing through said gate, until they shall respectively have paid the same, that is to say: For every mile in length or portion of a mile, whether passing through a gate or not, of said roads, complete and licensed as aforesaid, the following sums of money, and so in proportion for any greater or less number of sheep, hogs or cattle, to-wit:

For every score of sheep, one cent; for every score of hogs, two cents; for every score of cattle, two cents; for every horse and his rider, or led horse, one cent; for every sleigh or sled, one cent for each horse drawing the same; for every sulky, chaise or cart with two wheels, one cent for each horse drawing the same; for every carriage, coach, dearborn or wagon with four wheels, whose wheels shall be less than four inches in breadth, with one horse, one and one-half cents, and for every additional horse drawing the same, one cent; for every wagon or burden whose wheels shall be four inches and not exceeding seven inches wide, one cent for every horse drawing the same; for every wagon or burden the breadth of whose wheels shall be more than seven inches, one-half cent for each horse drawing the same: *Provided*, That for any wagon, et cetera, carrying burden, exceeding two tons in weight, on wheels less than four inches wide, and for any wagon, et cetera, carrying burden exceeding four tons in weight on wheels less than six inches wide double rates may be charged.⁹

**1059. Agreement of State as to Exemption of Boulevard Property
From the Exercise of the Right of Eminent Domain.**

Believing that it will be to the benefit and welfare of the general public to encourage and promote the construction of boulevards and driveways as provided in this act, and recognizing that such boulevards and driveways will not be constructed unless they are in some way protected from the encroachment by railroads and transportation companies and other companies having the right of eminent domain, or having the right of way, the

(9) Clause 7, Sec. 2, Act June 25, 1895, P. L., 382.

State of Pennsylvania hereby agrees and promises any company organized under the provisions of this act, that if such company shall, within two years after the date of its letters patent to be issued thereunder, expend on the construction of a boulevard or driveway and other purposes mentioned in clause six of section two, a sum not less than ten thousand dollars per mile as shall appear by the decree of court in said clause and section, and shall keep such driveway or boulevard in good order and repair, that it, the State, will not grant to any corporation or individual the right of eminent domain to condemn, or a right of way over or upon such driveway or boulevard, unless there shall appear an absolute necessity for so doing. If such necessity does seem to the State to have arisen the State agrees on its part that it will provide in the act granting such right of way or the right to exercise the eminent domain of the State, that the corporation or party seeking to use said right of way or to exercise such eminent domain shall first, and as a condition precedent to the exercise of the use or taking steps to condemn, demonstrate by a proceeding in the Court of Common Pleas of the proper county to which the said boulevard company shall be a party, that there is as a question of engineering no other feasible route for the construction of its proposed works or road, than over and upon the said boulevard, and unless the court hearing such application shall be clearly satisfied on the whole case that there is no other feasible route or way to construct the proposed road or works than upon the boulevard or driveway aforesaid, then the said court shall decree that the route or way or the exercise of the eminent domain shall not include the boulevard or driveway or any portion of it. In determining the feasibility of any other route, the fact that such route may be much more expensive shall not be considered as showing that the boulevard or driveway is the only feasible route. If it shall clearly appear that there is an absolute necessity to use the boulevard or driveway, then before such use and before the boulevard or driveway is in any way actually touched or used there shall have first been a final judgment of the court of last resort entered fixing definitely the amount of damages or compensation.¹⁰

(10) Clause 8, Sec. 2, Act June 25, 1895, P. L., 382. It is evident that the provisions of the foregoing section are contrary to Art. 16, Sec. 3, of the Constitution. See Sec. 28.

1060. Existing Plank Road and Turnpike Companies May Accept Provisions of Act.

Any corporation heretofore created for the purpose of constructing or maintaining any plank road or pike or macadamized road may accept the provisions of this act and of that to which it is a supplement, by a writing under the seal of the company, filed in the office of the Secretary of the Commonwealth, and filing therewith its letters patent or charter (which shall be the surrender and acceptance thereof) and thereupon the company shall become a body corporate under this act, with all the rights and privileges given by this act and the act to which it is a supplement, and it shall also have all the rights, franchises, privileges and powers, which it theretofore had under its old charter, and this shall also include all ordinances and the by-laws of any municipal corporation which had theretofore granted privileges to it.¹¹

1061. Street Railways on Boulevards.

On a bill in equity against a boulevard company and a street railway company, it appeared that the street railway company had permission from all the property owners along the route of the boulevard to operate its railway thereon, except from the plaintiffs. The boulevard company, consisting of the same persons as the stockholders in the railway company, having the right of eminent domain, had condemned the plaintiff's land under the Act of 1895, and were building a roadway on it. It acknowledged that it was laying flat rails on the boulevard in expectation that the railway company would ultimately obtain plaintiff's consent to operate on the road, denying that it intended to operate a line itself, or permit any other company to do so without such consent. Evidence showed that the rails would not interfere with the driveway. Held, that the continuance of the preliminary injunction was properly refused.¹²

(11) Sec. 3, Act June 25, 1895, P. L., 382.

(12) *Redman et al. v. Monongahela Boulevard Co., etc.*, 189 Pa., 437 (1899).

CHAPTER XLII.

BOURSE COMPANIES.

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| 1062. Incorporation Authorized. | 1065. When Dividends are De- |
| 1063. Certificate to be Filed with | clared Upon the Entire Capital |
| Secretary of the Commonwealth | Stock. |
| —Contents of Certificate—Pro- | 1066. Proceedings in Case of |
| portion of Capital Stock to be | Sale or Lease of Real Estate— |
| Exempt from Taxation. | Entire Capital Stock to Become |
| 1064. Assessment of Tax Upon | Taxable When. |
| Capital Stock. | |

1062. Incorporation Authorized.

In addition to the corporations for profit of the second class authorized to be created by the second section of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, corporations may be created for the purpose of erecting and maintaining a bourse or exchange hall or other building, to be used in whole or in part as a bourse or exchange hall or as a meeting place for merchants or other business men or for the exhibition of manufactured articles or natural products, and such corporations shall be governed as to the amount of their capital stock and as to the par value of the shares thereof, as may be provided by the aforesaid act and the several supplements thereto.¹

1063. Certificate to Be Filed With Secretary of the Commonwealth —Contents of Certificate—Proportion of Capital Stock to Be Exempt From Taxation.

Any corporation incorporated under the provisions of this act, or any corporation heretofore incorporated, for the purchase and sale of real estate or for holding, leasing and selling real estate, and accepting the provisions of this act, shall file in the office of the Secretary of the Commonwealth a certificate specifying the

(1) Sec. 1, Act June 10, 1893, P. L., 417.

date of incorporation and the act of assembly under which they were incorporated and the lot or building or the part or parts thereof to be used as a bourse or exchange hall or for an exhibition hall for the display of manufactured articles or natural products and the value thereof, and what proportion the value of the real estate used as a bourse or exchange hall or for an exhibition hall for the display of manufactured articles or natural products bears to the entire capital stock of such corporation, and upon such proportion of their capital stock, corporations incorporated under this act or heretofore incorporated for the purchase and sale of real estate or for holding, leasing and selling real estate and accepting the provisions of this act shall be exempt from taxation.²

1064. Assessment of Tax Upon Capital Stock.

In assessing the tax upon the capital stock of corporations accepting the provisions of this act as provided in the second section thereof, that part of the capital stock of the corporation exempt from taxation shall bear the same proportion to its whole capital stock as the value of the real estate occupied as such bourse or exchange hall or exhibition hall for the display of manufactured articles or natural products bear to the entire capital stock of such corporations.³

It shall be the duty of the Auditor General to determine what part of the capital stock of such corporations shall be exempt from taxation, and from his decision an appeal shall lie as now provided by law in other cases involving questions of taxation.⁴

1065. When Dividends Are Declared Upon the Entire Capital Stock.

Any corporation accepting the provisions of this act, which shall in any year declare a dividend upon its entire capital stock, shall first file in the office of the Auditor General, a certificate setting forth the intent of such corporation to pay a dividend as aforesaid, and thereupon the entire capital stock of such corporation shall be subject to taxation for such year.⁵

(2) Sec. 2, Act June 10, 1893, P. L., 417.

(3) Sec. 3, Act June 10, 1893, P. L., 417.

(4) Sec. 4, Act June 10, 1893, P. L., 417.

(5) Sec. 5, Act June 10, 1893, P. L., 417.

1086. Proceedings in Case of Sale or Lease of Real Estate—Entire Capital Stock to Become Taxable When.

It shall be unlawful for any corporation accepting the provisions of this act to sell, transfer, let or lease any real estate specified in the certificate filed with the Secretary of the Commonwealth as required by the second section of this act as intended to be used as a bourse or exchange hall, without first filing in the office of the Secretary of the Commonwealth a certificate setting forth the intent of such corporation to sell, transfer, let or lease such real estate, and thereupon the entire capital stock of such corporation shall thereafter be subject to taxation: *Provided*, That if any corporation accepting the provisions of this act shall sell, transfer, let or lease the real estate or the part thereof specified in the certificate filed with the Secretary of the Commonwealth as required by the second section of this act as intended to be used as such bourse or exchange hall, or shall declare a dividend without first filing a certificate in the office of the Auditor General as provided in the fifth section of this act, the entire capital stock of such corporation shall thereupon be liable to taxation, together with a penalty of twelve per centum upon that portion of the capital stock theretofore exempt from taxation under the provisions of this act.⁶

(6) Sec. 6, Act June 10, 1893, P. L., 417.

CHAPTER XLIII.

BREWING AND DISTILLING COMPANIES.

1067. Incorporation Authorized. 1069. State Taxation.
1068. Statement of Purpose in
Charter.

1067. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XVIII. . . . any manufacturing business also including the manufacture and brewing of malt liquors.. . . .¹

Par. 18, of Sec. 2 of the Act of 1874, excluded from the class of manufacturing companies which might be incorporated under its provisions those for "the distilling or manufacture of intoxicating liquors." The Act of April 10, 1879, P. L., 20, amended said paragraph so that the same read "also including the manufacturing and brewing of malt liquors, but excluding the distilling and manufacturing of spirituous liquors."

The Act of July 9, 1901, P. L., 624, further amending said paragraph omitted the words "but excluding the distilling and manufacturing of spirituous liquors," so that distilling companies may now be incorporated on the same basis as other manufacturing corporations. Both brewing and distilling companies now stand on the same basis, the inclusion in the provisions of the said eighteenth paragraph of the Act of 1879 specifically provided for in the case of brewing companies being effected by implication through the omission from the amendment of July 9, 1901, of the exception theretofore existing in their case.

The manufacture and sale of brewed and malt liquors is a lawful business and letters patent should not be denied because of a protest signed by residents of the vicinity of a proposed brewery, alleging that the owners thereof were non-residents, the locality a residential place, and that the erection and conduct thereof would

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Act of July 9, 1901, P. L., 624, amending Par. 18, Sec. 2, Act April 29, 1874, P. L., 73.

depreciate values of real estate, annoy residents and lower the normal tone of the community. Such questions are for the proper court on an application for a license for the corporation.²

1068. Statement of Purpose in Charter.

Brewing and distilling companies have been incorporated with the following statements of purpose:

"The manufacture and sale of beer, porter, ale and all other malt liquors." 1904.

"Manufacturing and brewing malt liquors." 1904.

"The distilling, manufacturing and selling spirituous liquors." 1903.

"Manufacturing beer and selling the same to the public and so far as the same may be necessary in said business, the manufacture of ice." 1904.

1069. State Taxation.

Although brewing and distilling companies are manufacturing corporations they are not exempt from the tax on capital stock being expressly excluded from the exemption granted to other manufacturing corporations by the provisions of the Act of June 7, 1907, P. L., 430, amending Sec. 21 of the Act of June 1, 1889.³

(2) *In re McDonald Brewing Co.*, 16 D. R., 655 (1907); *In re Bernard Corr Co.*, 10 *Dau. Co. Rep.*, 104 (1907); 16 D. R., 697.

(3) See Sec. 786.

CHAPTER XLIV.

BRIDGE AND FERRY COMPANIES.

- 1070. Formation of Bridge and Ferry Companies.
- 1071. What the Charter Shall State—Statement of Purpose in Charter.
- 1072. Directors of Bridge and Ferry Companies to Contract for Lands—Eminent Domain.
- 1073. Rates of Toll for Crossing Bridges.
- 1074. Penalty for Demanding Excessive Tolls.
- 1075. Accounts to be Kept—Dividends.
- 1076. Punishment for Wilfully Destroying Works.
- 1077. Privileges to Cease on Neglect to Prosecute Works.
- 1078. County Commissioners Authorized to Rebuild Certain Bridges Over Streams Connecting Two Counties, Destroyed by Ice or Otherwise.
- 1079. When Commissioners Refuse to Act, Court May Compel by Mandamus.
- 1080. County Commissioners May Borrow Money.
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- 1082. Repeal of Acts Inconsistent Herewith.
- 1083. County Commissioners Authorized to Rebuild Bridges Destroyed by Ice or Otherwise.
- 1084. Counties may Borrow Money to Pay Therefor.
- 1084a. Reconstruction by the Commonwealth of County Bridges Destroyed by Flood and Wind Storms.
- 1085. Sales of Property of Bridge Companies to Other Corporations.
- 1086. Acquisition of Toll Bridges by Counties.
- 1087. Report of Viewers.
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- 1089. Court May Examine Witnesses for or Against Report.
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- 1091. Appeal from Awards.
- 1092. Case May be Removed to Another County.
- 1093. Counties Authorized to Purchase or Condemn Bridges Over Streams Dividing Parts of Said Counties.
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- 1095. Viewers — Appointment — Meetings—Report.
- 1096. Exceptions to Report of Viewers—Appeal.
- 1097. Time When Viewers May be Appointed.
- 1098. Powers of the County Commissioners.
- 1099. Electors May Petition County Commissioners to Act.
- 1100. Condemnation of Bridges in Cities.
- 1101. City to Tender Bond When Compensation Cannot be Agreed Upon.
- 1102. Appointment of Viewers.
- 1103. Viewers to be Sworn, Determine Damages and Make Report.

- 1104. Exceptions to Viewers' Report.
- 1105. Time of Appointing Viewers—Costs.
- 1106. Penalty for Forcible Crossing of Bridges Without Payment of Toll.
- 1107. Issue of Preferred Stock.
- 1108. Bridge Companies Incorporated Under Special Acts May Borrow Money and Secure Payment of Same by Mortgage.
- 1109. Stockholders to Cast One Vote for Each Share of Stock.
- 1110. Corporations for the Erection of Bridges Crossing Streams Forming the Boundaries Between Pennsylvania and any Other State.
- 1111. Measure of Damages for Taking Bridges.

- 1112. Directors May Contract for the Use of the Bridge by Street Railway.
- 1113. Distance Between Bridges.
- 1114. Elevation of Bridges.
- 1115. Bridges Over Navigable Streams.

FERRY COMPANIES.

- 1116. Powers of Ferry Companies.
- 1117. Distance Between Ferries.
- 1118. Ferries May be Operated by Individuals.
- 1119. Exclusive Privileges under Special Acts.
- 1120. Obstruction of Operations of Ferries.
- 1121. Proceedings Against Ferry Companies to Forfeit Charters for Non-User.

1070. Formation of Bridge and Ferry Companies.

Corporations may be formed under the provisions of this act for V. The construction and maintenance of a bridge over streams within this State. . . . VII. The establishment and maintenance of a ferry.¹

1071. What the Charter Shall State—Statement of Purpose in Charter.

The charter of a ferry, wharf² or bridge company shall also state—

- I. The stream over or on which the same is proposed to be erected.
- II. The place and county or counties of its location.
- III. Its distance from any other wharf, bridge or ferry over or

(1) Secs. 1 and 2, Act April 29, 1874, P. L., 73.

(2) The Act of June 17, 1876, P. L., 30, added to the purposes for which corporations might be formed under the Act of 1874, wharf companies, and Sec. 31, of said Act of 1874, was amended so as to cover wharf, as well as bridge and ferry companies. The Act of May 25, 1887, P. L., 268, however, which amended said 31st Sec., directly, without reference to the amendment thereof of the Act of 1876, omitted all reference to wharf companies. The provisions of the Act of 1876, however, are doubtless in force, as far as they apply to wharf companies, *q. v.*

on the same stream which shall have been before that date incorporated under the laws of this Commonwealth.³

Statement of purpose in charter:

The erection, construction and maintaining a bridge [or ferry] and approaches thereto over the _____ river, from a point at _____, in the county of _____, to a point on the opposite side of said river in the county of _____.

The location of said bridge [or ferry] is _____ feet from the _____ bridge [or ferry], the nearest bridge [or ferry] to said location over said _____ river heretofore incorporated under the laws of this Commonwealth.

1072. Directors of Bridge or Ferry Companies to Contract for Lands —Eminent Domain.

All bridge and ferry companies incorporated under this statute, when not otherwise provided in this act, shall, from the date of the letters patent creating the same, be governed, managed and controlled, as follows:⁴

Before the directors of any such corporation shall proceed to build any such bridge or ferry, it shall be lawful for them to contract with the owner, or owners of any land, for the purchase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge or ferry, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners; but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act. The said bridge or ferry shall be so constructed as not to interfere with the free navigation of said creek or river.⁵

1073. Rates of Toll for Crossing Bridges.

When the said corporation shall have erected and completed a bridge over any creek or river, under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates and to demand and receive tolls

(3) Sec. 7, Act April 17, 1876, P. L., 34, amending Sec. 31, Act of April 29, 1874.

(4) Act of May 25, 1887, P. L., 268, amending Sec. 31, Act of April 29, 1874, P. L., 90.

(5) Act of May 25, 1887, P. L., 268, amending Sec. 31, Act April 29, 1874, P. L., 90.

for crossing said bridge, at such rates as the president and directors thereof shall, from time to time, determine, not exceeding the rates following, namely: For every score of sheep or swine, eight cents; for every score of horned or muley cattle, twenty-five cents; for every mule or horse, driven or led, five cents; for every horse or mule, ladened or unladened, with rider, five cents; for every two-wheeled vehicle and one horse, six cents; the same with two horses, ten cents; for every four-wheeled vehicle with one horse, ten cents; for every four-wheeled vehicle with two horses, fifteen cents; for either of the last-named vehicles, with four horses, twenty cents; for every foot passenger, two cents: *Provided*, That any bridge, not wholly or in part within the limits of any city of the first or second class within this Commonwealth, that shall hereafter be constructed or reconstructed, and the cost whereof shall be increased beyond the minimum by reason of the demands and requirements of navigation, the corporation owning the same may demand and receive tolls, not exceeding fifty per centum in excess of the above rates, in any case where such increased rates do not produce a net revenue in excess of six per centum per annum upon the capital stock of such corporation: *Provided further*, That no such increased tolls shall be charged in any case until the same shall have been authorized by the Court of Quarter Sessions of the proper county, or if a bridge be located over a stream dividing counties, then by the Court of Quarter Sessions of the county wherein the office of the company may be situated, and in all cases said corporations shall cause to be put up and kept in some conspicuous place at the gate of said bridge a list of the rates of toll: *And provided further*, That all children going to and from school shall have free passage.⁶

1074. Penalty for Demanding Excessive Tolls.

If the said corporation, or any person employed for it, shall collect or demand any greater rate or prices for passing over said bridge, than what is prescribed in the list of tolls, put up at the gate as aforesaid, or neglect to keep said bridge in repair, he or they shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half

(6) Act of May 6, 1887, P. L., 92, amending Clause 2, Sec. 31, Act April 29, 1874, P. L., 90.

to be paid to the county and the other half to the person who may sue for the same.⁷

1075. Accounts to Be Kept—Dividends.

Said corporation shall keep a just account of all moneys received by their several collectors of tolls, for crossing said bridge; and after deducting all contingent costs and charges, and such proportion of the income as may be sufficient for a fund to provide against the decay, the repairing and rebuilding of the said bridge that time and accident may render necessary, they shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice personally or by advertisement, of the time and place when and where the same shall be paid and shall cause the same to be paid, accordingly, in ten days thereafter, or as soon thereafter as the same shall be demanded.⁸

1076. Punishment for Wilfully Destroying Works.

If any person or persons shall wilfully pull down, break or destroy, with intent to injure, any part or parts of the said bridges, or any toll house, gates, bars or other property of the said corporation, erected for the use of said bridges, or shall wilfully deform or destroy the letters or figures in any list of the rates of toll, affixed in any place for the information of passengers, or shall wilfully or maliciously obstruct or impede the passage in or over the said bridges, or any part or parts thereof, he or she, or they, so offending, shall each of them forfeit and pay for each and every such offense, to the said corporation, the sum of ten dollars, to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted cigar or pipe, or of carrying fire in any manner whatsoever over said bridge, except in a lantern or in some vessel secured so that the probability of setting fire to said bridges shall be fully prevented; or shall discharge any pistol or gun or any fire-arms, on or near said bridges, he, she or they so offending, shall forfeit and pay to the said company the sum of five dollars each, with all other damages sustained to said bridges, for every such offense, to be recovered as

(7) Sec. 7, Act April 17, 1876, P. L., 34, amending Clause 3, Sec. 31, Act April 29, 1874, P. L., 90.

(8) Sec. 7, Act April 17, 1876, P. L., 34, amending Clause 4, Sec. 31, Act April 29, 1874, P. L., 90.

aforesaid; or if any person or persons shall evade the payment of any toll or duty for passing said bridges, or ride or drive his or their horse or horses on or over said bridge in a faster gait than a walk, he, she or they so offending, shall forfeit and pay to the said corporation the sum of five dollars for every such offense, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the said offenses, unless commenced within thirty days after it shall be known who committed said offense, and he, she or they so offending, shall remain liable to action at the suit of said corporation for such wrongs, if the sums herein mentioned be not sufficient to repair and satisfy said damages.⁹

1077. Privileges to Cease on Neglect to Prosecute Works.

If any company incorporated under this law for the purpose of erecting any bridge as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters patent, and shall not, within the space of five years thereafter complete the same, the rights and privileges thereby granted to the said corporation shall revert to the Commonwealth.¹⁰

1078. County Commissioners Authorized to Rebuild Certain Bridges Over Streams Connecting Two Counties, Destroyed by Ice or Otherwise.

The county commissioners of the several counties of this Commonwealth are hereby authorized to take charge of and rebuild and reconstruct any bridge over any stream or river forming the boundary line between two counties, when the same is on the line of a public highway, or deemed necessary for the use of the traveling public, and owned and maintained by corporations or by private persons, or which was built by public subscriptions, used exclusively for vehicles and foot purposes, which has been destroyed by ice, flood or otherwise, at any time, or which has been or may be abandoned, and the site or location and piers and abutments no longer used by the owners of said bridge, and the same rebuilt by said corporation or private persons or by public subscriptions on another site, or on new foundations at another point. And the said commissioners of the respective counties are

(9) Sec. 7, Act April 17, 1876, P. L., 35, amending Clause 5, Sec. 31, Act April 29, 1874, P. L., 91.

(10) Clause 6, Sec. 31, Act April 29, 1874, P. L., 92.

hereby authorized to take charge of and rebuild and maintain jointly such bridge as a county bridge, and the costs and expenses of such joint reconstruction shall be paid by the said counties, respectively, in the proportion of the population thereof as ascertained at the last census: *Provided*, That just compensation shall be made to the owners of the former bridge for the taking or impairment of the rights and franchises of such owners, in the same manner as is provided in this act for ascertaining the compensation due for the piers and abutments.¹¹

1079. When Commissioners Refuse to Act Court May Compel by Mandamus.

If the said commissioners of the said counties shall neglect or refuse to act as herein provided upon the petition of ten citizens and taxpayers residing in the city, borough or township in which the bridge is or was located, which petition shall set forth fully all the facts, supported by the affidavit of two of said citizens, to the Court of Common Pleas of the county where located, upon hearing, said court having jurisdiction may issue a mandamus to said commissioners to proceed as provided by this act.¹²

1080. County Commissioners May Borrow Money.

For the purpose of carrying into effect the provisions of this act, the county commissioners of the respective counties of this Commonwealth are hereby authorized to borrow any sum of money, not exceeding the constitutional limitations, if necessary for the purposes aforesaid, at a rate of interest not exceeding six per centum, and issue bonds therefor not exceeding five hundred dollars each. Said bonds to be payable at the option of the commissioners of the county issuing the same after five years and within ten years from the date of issue.¹³

1081. Commissioners May Take Piers, Etc., and Pay for the Same—Proceedings When Parties Cannot Agree on Amount of Damages.

When the said commissioners have taken any piers, abutments, approaches, toll houses or other property necessary for the re-

(11) Act April 25, 1907, P. L., 119, amending Act of May 13, 1901, P. L., 191, which amended Sec. 1, of the Act of May 6, 1897, P. L., 46.

(12) Sec. 2, Act of May 6, 1897, P. L., 46.

(13) Sec. 3, Act of May 6, 1897, P. L., 46.

building and maintenance of any bridge as aforesaid, and are unable to agree with the owners upon the amount of damages they may sustain by reason thereof, the Court of Quarter Sessions of the county in which said property is situate shall, upon petition of any party in interest, appoint three disinterested freeholders of said county, to view the premises and assess the damages, if any, which such owner may sustain by the taking of the same, and make report of their proceedings to the said court at the next session thereof, ten days' notice of the time and place of meeting to be given the viewers and the parties in interest; the owner of any such property taken as aforesaid, or the commissioners, shall have the right to appeal from any award of damages made under the provisions of this act, to the Court of Common Pleas of the county in which such property is situate, under such regulation for bringing the matter to a trial in due course of law by a jury as the said court may prescribe, either party having the right of appeal to the Supreme Court.¹⁴

1062. Repeal of Acts Inconsistent Herewith.

All acts or parts of acts inconsistent hereto are hereby repealed, but this act shall not be understood or construed to repeal, modify or affect the provisions of an act, entitled "An act authorizing the Commonwealth of Pennsylvania to rebuild county bridges over navigable rivers and other streams, which have been declared public highways by act of Assembly, where such bridges have been destroyed by flood, fire or other casualty, providing for the appointment of viewers and inspectors, and the payment of the costs of rebuilding such bridges," approved the third day of June, Anno Domini one thousand eight hundred and ninety-five.¹⁵

1063. County Commissioners Authorized to Rebuild Bridges Destroyed by Ice or Otherwise.

The county commissioners of the several counties of this Commonwealth are hereby authorized to take charge of or rebuild and reconstruct any bridge, over any stream or river running into or through any county, owned and maintained by corporations, where the same have been destroyed by ice or otherwise within ten years and abandoned by the owners of the said bridge, or where said

(14) Sec. 4, Act of May 6, 1897, P. L., 46.

(15) Sec. 5, Act of May 6, 1897, P. L., 46.

bridge crosses a stream forming the boundary line between two counties, then the commissioners of the county in which said bridge is located or has been located, or the commissioners of the respective counties, where the stream or river runs between counties, are hereby authorized to jointly reconstruct and maintain such bridge as a county bridge, the costs and expenses of which joint construction and maintenance shall be paid by said counties respectively in the proportion to the population thereof as ascertained at the last census. If the said commissioners shall neglect or refuse to act as herein provided, upon the petition of ten citizens and taxpayers residing in the city, borough or township in which the bridge is or was located, which petition shall set forth fully all the facts supported by the affidavit of two said citizens, to the Court of Common Pleas of the county, and said court upon hearing, may issue a mandamus compelling said commissioners to proceed as provided by this act: *Provided*, That this act shall not in any way affect any bridge heretofore erected or built or now in course of construction under the provisions of the Act of June sixteen, one thousand eight hundred and ninety-one, amending the first section of the Act of June eighth, one thousand eight hundred and eighty-one, but all such bridges shall be maintained as though this act had not been passed.¹⁶

1084. Counties May Borrow Money to Pay Therefor.

For the purpose of carrying into effect the provisions of this act, the county commissioners of the respective counties of this Commonwealth are hereby authorized to borrow any sum of money, not exceeding the constitutional limitations, if necessary for the purposes aforesaid, at a rate of interest not exceeding six per centum, and to issue bonds therefor, in sums not exceeding five hundred dollars each.¹⁷

1084a. Reconstruction by the Commonwealth of County Bridges Destroyed by Floods or Wind Storms.

The Act of June 3, 1895, P. L., 130, as amended by the Act of April 21, 1903, P. L., 230, provides for the reconstruction of county bridges destroyed by floods or wind storms.

(16) Sec. 1, Act of June 8, 1881, P. L., 67, as amended by Sec. 1, Act of June 16, 1891, P. L., 305, and re-amended by Act of April 19, 1895, P. L., 39.

(17) Sec. 2, Act of June 8, 1881, P. L., 67.

1085. Sale of Property of Bridge Companies to Other Corporations.

It shall be lawful for any bridge company, with the assent of the holders of not less than two-thirds of its capital stock, to sell or dispose of its property to any other corporation, and said corporation so purchasing shall have full power, in accordance with the purposes of its charter, to use the property so purchased for the purpose designated in the charter under which said property was built.¹⁸

1086. Acquisition of Toll Bridges by Counties.¹⁹

When any turnpike road company, bridge company or other corporation has heretofore erected or may hereafter erect by authority of general or special laws, any bridge over a river, creek or rivulet crossing any road or highway on which the public are required to travel, and such company or corporation is authorized to charge and take tolls for the use and crossing of such bridge, and at least twenty residents and taxpayers of the county where such bridge is situated shall petition the Court of Quarter Sessions of said county, or if said bridge be located on a river, creek or rivulet dividing two counties, then upon the petition of at least twenty residents of each county, representing that the said bridge is necessary to the accommodation of public travel and that the payment of tolls over such bridge is burdensome to the traveling public and praying that the same shall be taken as a county bridge, the said court shall appoint six disinterested persons to view the said bridge and assess the damage, if any, which such company or corporation may sustain by the taking of the same, and make report of their proceedings to the respective court at the next term thereof: *Provided*, That notice shall be given in at least one newspaper published at the county seat, of such intended application, for at least three weeks before the presentation of such petition.²⁰

(18) Act of June 12, 1879, P. L., 173.

(19) The Act of May 8, 1876, P. L., 131, is applicable to Philadelphia county as well as to other counties in the State. City Ave. and Germantown Bridge, 164 Pa., 394 (1894).

(20) Sec. 1, Act of May 8, 1876, P. L., 131. The second proviso to this section, which reads as follows: "Provided further, That when two or more toll bridges cross the same stream and lead to the same streets or general thoroughfares, and are situated within one-fourth of a mile of each other, no purchase of any one of said bridges shall be made under this

1087. Report of Viewers.

The viewers so appointed, shall make report at the next term of the said court, which said report shall state particularly: First. Who of them were present at the view. Second. Whether they were severally sworn or affirmed. Third. Whether the bridge is necessary as a free bridge for public accommodation and the payment of tolls on the same as an unjust burden on the traveling public and the people of the township or townships where the same is located. Fourth. The amount of damages, if any, sustained by such company or corporation by reason of the taking of the same.²¹

1088. Approval of Report.

If, upon the report of the viewers, it shall appear to the court and grand jury that such bridge ought to be declared a county bridge, and is necessary for the public accommodation, and that payment of tolls thereon is an unjust burden on the traveling public and the people of the township or townships near where the same is located, the report shall be approved, and the damages shall be payable out of the county treasury, and the said bridge or bridges shall be taken possession of by the county commissioners, and shall thenceforth be declared a county bridge and all tolls for travel thereon shall cease: *Provided*, That in case one of the viewers fail to attend at the time and place of meeting, the viewers present, if five or more in number, may view and make the report.²²

act, unless the assent of the stockholders of the remaining bridge or bridges be first had at a meeting called for that purpose," was repealed by the Act of June 10, 1881, P. L., 96, which contains the following provision: "Provided, that this act shall not be construed so as to apply to any cases wherein either of the bridges, referred to in the provision hereby repealed, shall have been erected since May eighth, one thousand, eight hundred and seventy-six." The said Act of June 10, 1881, P. L., 96, repealing said proviso of said Act of 1876, has, however, been held unconstitutional and void in *Oil City v. Petroleum Bridge Company*, 9 D. R., 110 (1900), because the whole first section of the Act of 1876 is not published at length as before amended and as amended.

(21) Sec. 2, Act of May 8, 1876, P. L., 131.

(22) Sec. 3, Act of May 8, 1876, P. L., 131, as amended by Act of May 3, 1878, P. L., 41.

1089. Court May Examine Witnesses For and Against Report.

In their inquiry into the propriety of approving and confirming any report under this act, it shall be the duty of the court and grand jury, if requested, to hear and examine witnesses for and against the same.²³

1090. Taking of Bridges on County Lines.

Bridges over any river, creek or rivulet, being on the line of adjoining counties, shall be taken in the manner provided in this act in the case of any other county bridges, except that the Court of Quarter Sessions of each county shall appoint three of the viewers, and that a report, as aforesaid, be made to the said courts, respectively; and the said courts shall, together with the grand jury and commissioners of the respective counties, in all other respects, have and exercise concurrent jurisdiction and discretion therein: *Provided*, That the damages for the appropriation of any such bridge shall be borne by said counties equally: *And provided*, That this act shall not be construed to repeal any law heretofore passed in relation to purchase of any particular bridge by any county.²⁴

1091. Appeal from Awards.

The company owning any such bridge, as mentioned in said act, or the county, shall have the right to appeal from any award of damages, made under the provisions thereof, to the Court of Common Pleas in which such bridge or part thereof is situated, under such regulations for bringing the matter to a trial in due course of law by a jury, as the said court may prescribe.²⁵

1092. Case May Be Removed to Another County.

After appeal as aforesaid, the case shall be removed, on application of either party, for trial in some other county to be determined by the court to which the appeal was taken.²⁶

(23) Sec. 4, Act of May 8, 1876, P. L., 131.

(24) Sec. 5, Act of May 8, 1876, P. L., 131, as amended by Act of April 11, 1889, P. L., 29, which amended the prior amendment of May 3, 1878, P. L., 42, Sec. 2.

(25) Sec. 4, Act of May 3, 1878, P. L., 42.

(26) Sec. 5, Act of May 3, 1878, P. L., 42.

1093. Counties Authorized to Purchase or Condemn Bridges Over Streams Dividing Parts of Said Counties.²⁷

Whenever any county of this Commonwealth shall be divided or separated in any of its territorial sections or parts by intervening rivers or streams of water, it shall be lawful, and the right is given to such county or counties, to purchase, enter upon, take, use, hold and appropriate such bridge or bridges, together with the approaches and appurtenances thereto, lying within the corporate limits of such counties, as shall have been erected and now in use over such rivers or streams of water, so dividing and separating the sections or parts aforesaid.²⁸

1094. When Compensation Cannot Be Agreed Upon.

If the compensation to be paid for such bridge cannot be agreed upon between the owners thereof and such counties, it shall be lawful for such county or counties to tender the bond thereof, as security, to the person, firm or corporation claiming or entitled to compensation, or to the attorney or agent of any absent person, or to the agent or officers of a corporation, or to the guardian or committee of any one under legal incapacity, the conditions of which shall be, that the said county shall pay or cause to be paid such amount of damages or compensation as the person, firm or corporation, as the case may be, shall be entitled to receive, after the same shall be agreed upon or assessed in the manner provided in this act; in case the party or parties claiming damages or compensation refuse or do not accept the security so tendered, such county shall then give the party, his or their agent, attorney, guardian or committee, written notice of the time when the same will be presented in the court for approval, and thereafter the said county may present said security to any Court of Common Pleas of the county wherein such bridges are located and used, and when approved the said security shall be filed in said court for the benefit of those interested, and recovery may be had thereon

(27) This act is modeled on that of May 26, 1893, P. L., 154, *infra*, Sec. 871, providing for the condemning of bridges in cities. This act seems to differ from that of May 8, 1876, P. L., 131, *supra*, Sec. 1100, in that under this act the county takes the bridge of its own volition, and without regard to any findings whether the payment of toll is burdensome on the traveling public; while under the Act of May 8, 1876, petitioners take the initiative, and it must be shown that the tolls are burdensome.

(28) Sec. 1, Act May 5, 1899, P. L., 231.

for the amount of damages or compensation assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question; and upon the approval of said security, said county may enter upon, appropriate, take, hold, use and control such bridge or bridges.²⁹

1095. Viewers—Appointment—Meetings—Report.

In case the compensation for damages accruing from such appropriation, taking, holding and using have not been agreed upon, any Court of Common Pleas of the proper county, or any law judge thereof in vacation, on application thereto by said county or any person interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time, not less than ten nor more than twenty days thereafter, when said viewers shall meet and view the said bridges. The said viewers shall give at least ten days' notice, in writing, of the time of their first meeting to the owners, agents, officers, attorneys or representatives of the persons interested, or such other notice as the court may direct. The said viewers, having been first duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire under the provisions of this act, and having viewed the property and structure, shall hear all parties interested and their witnesses, and shall estimate and determine the damages for the property so taken, appropriated, held and used (and) to whom the same are payable; they shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested, of the time and place when said viewers will meet and exhibit said report and hear all exceptions thereto. After making whatever changes are deemed right and proper, the said viewers, or any two of them, shall make report to the court, showing the amount of damages or compensation allowed, and to whom payable, and shall file therewith a plan showing the location of said bridge or bridges so taken and appropriated.³⁰

1096. Exceptions to Report of Viewers—Appeal.

Upon the report of said viewers, or any two of them, being filed

(29) Sec. 2, Act May 5, 1899, P. L., 231.

(30) Sec. 3, Act May 5, 1899, P. L., 231.

in said court, any party interested may, within thirty days thereafter, file exceptions to the same, and the said court shall have power to confirm said report, or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report. Or within thirty days from the filing of such report in court, any party interested may appeal and demand a trial by jury, and any party so interested may, within thirty days after final decree, have an appeal to the Supreme Court. If no exceptions are filed, or no demand made for trial by jury, within said thirty days after the filing of said report, the same shall become absolute. The said Court of Common Pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.³¹

1097. Time When Viewers May Be Appointed.

The viewers provided in the foregoing sections may be appointed before, or at any time after, the entry upon, taking and appropriating of such property. They shall have power to administer oaths or affirmations to all parties and witnesses. The costs of the viewers and all court costs incurred in the proceedings aforesaid, shall be defrayed by said county, and each of said viewers shall be entitled to a sum not exceeding five dollars per day for every day necessarily employed in performance of the duties herein prescribed.³²

1098. Powers of the County Commissioners.

The county commissioners of such counties are hereby given full power to determine upon the purchase, appropriation or condemnation of such bridge or bridges; to negotiate with the owner or owners thereof, as aforesaid; to make, execute, tender, deliver and file the bond of the county, aforesaid; to institute and prosecute to the end, in the name of the county, all legal proceedings necessary, or required under this act, and to levy the tax or provide the means of payment for such bridge or bridges, purchased, appropriated or condemned by their respective counties under the terms and provisions of this act.³³

(31) Sec. 4, Act May 5, 1899, P. L., 231.

(32) Sec. 5, Act May 5, 1899, P. L., 231.

(33) Sec. 6, Act May 5, 1899, P. L., 231.

1099. Electors May Petition County Commissioners to Act.

It may be lawful for the qualified electors of any district in which such bridge is situate, or of the districts, boroughs or townships which such bridge connects, at any time to petition the county commissioners, praying them to enter upon and take such bridge in the manner prescribed by this act; and if, at any time, such a petition, signed by at least one hundred of the qualified electors of the district in which such bridge is situate, or of the districts, boroughs or townships which such bridge connects, shall be presented to the county commissioners praying them to enter upon and take such bridge in the manner aforesaid, it shall be the duty of the county commissioners to either grant or refuse the prayer of such petition within thirty days from the filing of the same; and if the said commissioners shall refuse the prayer of the said petition the said petitioners may present the said petition, with the action of the said commissioners refusing the prayer of the said petition endorsed thereon, to the grand jury of the proper county, at the next regular session thereof, and if the said grand jury shall approve the entering upon and taking of such bridge, it shall be the duty of the said commissioners to forthwith enter upon and take such bridge, in the manner hereinbefore prescribed by this act.³⁴

1100. Condemnation of Bridges in Cities.³⁵

Whenever any city of this Commonwealth shall be divided or separated in any of its territorial sections or parts by intervening rivers or streams of water, it shall be lawful and the right is given to such city or cities, to purchase, enter upon, take, use, hold and appropriate such bridge or bridges, together with the approaches and appurtenances thereto, lying within the corporate limits of such cities as shall have been erected and now in use over such rivers or streams of water so dividing and separating the sections or parts aforesaid. Whenever the councils of such cities shall determine upon the purchase, appropriation or condemnation of

(34) Sec. 7, Act May 5, 1899, P. L., 231.

(35) Sec. 8, of the Act of April 29, 1891, P. L., 31, provides for the purchase of bridges, already erected, in cities, where the same can be bought within ten per centum of what such bridges can be built for. Payment is to be made by the county. Under said act all proceedings are initiated and carried out by the county. Under the Act of May 29, 1893, the proceedings are instituted and carried on by the city.

such bridge or bridges, approaches and appurtenances, it shall be so expressed by ordinance or joint resolution of such councils.³⁶

1101. City to Tender Bond When Compensation Cannot Be Agreed Upon.

If the compensation to be paid for such bridge cannot be agreed upon between the owners thereof and such cities, it shall be lawful for such city or cities to tender the bond thereof as security to the person, firm or corporation claiming or entitled to compensation, or to the attorney or agent of any absent person, or to the agent or officers of a corporation, or to the guardian or committee of any one under legal incapacity, the conditions of which shall be that the said city shall pay or cause to be paid such amount of damages or compensation as the person, firm or corporation, as the case may be, shall be entitled to receive after the same shall be agreed upon or assessed in the manner provided in this act; in case the party or parties claiming damages or compensation refuse or do not accept the security so tendered, such city shall then give the party, his or their agent, attorney, guardian or committee, written notice of the time when the same will be presented in the court for approval, and thereafter the said city may present said security to any Court of Common Pleas of the county wherein such bridges are located and used, and when approved the said security shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages or compensation assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question, and upon the approval of said security said city may enter upon, appropriate, take, hold, use and control such bridge or bridges.³⁷

1102. Appointment of Viewers.

In case the compensation for damages accruing from such appropriation, taking, holding and using, have not been agreed upon, any Court of Common Pleas of the proper county, or any law judge thereof in vacation, on application thereto by said city or any person interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time not less than ten nor

(36) Sec. 1, Act May 26, 1893, P. L., 154.

(37) Sec. 2, Act May 26, 1893, P. L., 154.

more than twenty days thereafter, when said viewers shall meet and view the said bridges. The said viewers shall give at least ten days' notice in writing of the time of their first meeting to the owners, agents, officers, attorneys or representatives of the persons interested, or such other notice as the court may direct.³⁸

1103. Viewers to Be Sworn, Determine Damages and Make Report.

The said viewers having been first duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them and in relation to which they are authorized to inquire under the provisions of this act, and having viewed the property and structure, shall hear all parties interested, and their witnesses and shall estimate and determine the damages for the property so taken, appropriated, held and used, (and) to whom the same are payable; they shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested of the time and place when said viewers will meet and exhibit said report and hear all exceptions thereto. After making whatever changes are deemed right and proper the said viewers, or any two of them, shall make report to the court, showing the amount of damages or compensation allowed, and to whom payable, and shall file therewith a plan showing the location of said bridge, or bridges, so taken and appropriated.³⁹

1104. Exceptions to Viewers' Report.

Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days thereafter, file exceptions to the same, and the said court shall have power to confirm said report or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers with like power as to their report. Or within thirty days from the filing of such report in court any party interested may appeal and demand a trial by jury, and any party so interested may, within thirty days after final decree, have an appeal to the Supreme Court. If no exceptions are filed, or no demand made for trial by jury within said thirty days after the filing of said report, the same shall become absolute. The said Court of Com-

(38) Sec. 3, Act May 26, 1893, P. L., 154.

(39) Sec. 3, Act May 26, 1893, P. L., 154.

mon Pleas shall have power to order what notices shall be given in connection with any part of said proceedings and may make all such orders as it may deem requisite.⁴⁰

1105. Time of Appointing Viewers—Costs.

The viewers provided for in the foregoing sections may be appointed before, or at any time after, the entry upon, taking and appropriating of such property. They shall have power to administer oaths or affirmations to all parties and witnesses.

The costs of the viewers and all court costs incurred in the proceedings aforesaid shall be defrayed by said city, and each of the said viewers shall be entitled to a sum not exceeding five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.⁴¹

1106. Penalty for Forcible and Fraudulent Crossing of Bridges Without Payment of Toll.

If any foot passenger, or any person riding or driving any horse, team of horses, oxen or mules, or asses, or any wagon, carriage or other vehicle drawn by horses, oxen, or mules, or driving any drove of horses, mules, cattle, sheep or hogs, shall attempt to cross without payment of toll, any bridge owned or kept by any incorporated company in this Commonwealth, it shall be lawful for the said company, their toll collector or agent, to prevent the said crossing, and to turn the said person or persons back, and to shut the gates of the said bridge, and prevent their passage until payment of the tolls, legally and justly demandable, shall be paid; and if any person shall force his way across the said bridge, without payment of the proper toll, or shall, with intent to defraud the said company of their just toll, pass by, or attempt to cross the said bridge without payment thereof, he shall be liable to a penalty in any sum not exceeding five dollars, for the use of the said company in which the gate of said bridge may be located; in every such case it shall be lawful for the said company, their toll collector or agent, to procure a warrant in the name of the Commonwealth, from any justice of the peace, for the arrest of the person so offending, authorizing the said toll collector or agent, or any constable, to arrest and bring him before the said justice, and on a

(40) Sec. 4, Act May 26, 1893, P. L., 154.

(41) Sec. 5, Act May 26, 1893, P. L., 154.

hearing of the case, the said justice, if the facts shall warrant it, shall give judgment against him for the said penalty, and issue process to collect the same; in any such prosecution the said toll collector or agent shall be a competent witness to prove the facts; nothing herein contained shall be construed to repeal any special provisions contained in the charter of any incorporated bridge company relative to the collection of tolls, or to the prevention or punishment of forcible or fraudulent crossing: *Provided*, That the foregoing penalty shall not be imposed upon any person who shall have failed to pay his or her toll by reason of the absence of the proper person to receive it.⁴²

1107. Issue of Preferred Stock.

It shall be lawful for any bridge company, incorporated by any special law of this Commonwealth, with the consent of a majority in interest of its stockholders, obtained at a meeting to be called for that purpose, of which public notice shall be given during thirty days, in a newspaper of the proper county (to) issue preferred stock of the company not exceeding the one-half of the capital stock of the corporation at such time; the holders of which preferred stock shall be entitled to receive such dividends thereon as the board of directors may prescribe, not exceeding twelve per centum per annum, payable out of the net earnings of the corporation.⁴³

1108. Bridge Companies Incorporated Under Special Laws May Borrow Money and Secure the Payment of the Same by Mortgage.

It shall be lawful for any bridge company, incorporated by any special law of this Commonwealth, to borrow money or secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and secure the same by a mortgage or mortgages, to be given and executed to a trustee or trustees for the use of the bondholders, upon their real estate, bridges, improvement, property and corporate rights and franchises, to an amount not exceeding one-half of the capital stock of the corporation, paid-in, and at a rate of interest not exceeding eight per centum per annum: *Provided*, That any bridge company or

(42) Act March 10, 1858, P. L., 90.

(43) Sec. 1, Act May 1, 1876, P. L., 91.

companies accepting the provisions of this act, shall thereafter hold their charters subject to the provisions of the Constitution.⁴⁴

1109. Stockholders to Cast One Vote for Each Share of Stock.

In all elections or meetings of stockholders of any turnpike, plank road or bridge company, incorporated under any law of this Commonwealth, every stockholder shall be entitled to one vote for every share of stock by him or her held in such corporation, to be cast either in person, or by proxy duly constituted by power of attorney in writing, attested by one or more subscribing witnesses.⁴⁵

1110. Corporations for the Erection of Bridges Crossing Streams Forming the Boundaries Between Pennsylvania and Any Other State.

Such corporations may be incorporated by special acts of the Legislature, not being included in the prohibition of Sec. 7, of Art. III, of the Constitution.⁴⁶ An example of such a special act is that incorporating the Milanville Bridge Company, in Wayne county, approved May 8, 1901, P. L., 144.

1111. Measure of Damages for Taking Bridges.

When a bridge is taken by a county for public use under the Act of May 8, 1876, P. L., 131, and its supplements, the measure of damages is the value of the property to the owners, not to the county taking it, and the property so to be valued includes not only the bridge structure but also the company's franchises. In such case, an offer by a county to show what it could have erected a new bridge for is irrelevant. The value of the capital stock of the bridge company is an element to be considered, and the returns made for purposes of taxation to the Auditor General are admissible as evidence of the value of such stock.⁴⁷

The true measure of damages for taking bridges under the Act of May 8, 1876, is just compensation for loss suffered by the bridge company in consequence of the taking of its property, being the substructure, superstructure and approaches to the bridge,

(44) Sec. 2, Act of May 1, 1876, P. L., 91.

(45) Act of June 11, 1879, P. L., 139.

(46) See Sec. 18.

(47) *Mifflin Bridge Co. v. Juniata County*, 144 Pa., 365 (1891).

together with the franchise or right to take tolls, and the jury have no right to find a less amount.⁴⁸

The rule that inquiry cannot be made into past profits in assessing damages for property taken under the right of eminent domain, does not apply when the property taken is a bridge. Such property has no general market value, and the value of its franchises depends upon their productiveness at the time of taking. Hence evidence is admissible to prove the receipts for, say, the five years preceding the taking. It seems, that the market value of the stock represents that of the bridge and its attendant franchises and would be a fair test of damages.⁴⁹

In freeing a toll bridge owned by a turnpike company it is immaterial, on a question of damages, that sometimes part of the net receipts were appropriated to keep up the turnpike road. This in no way depreciates the value of the bridge. That there were net earnings is important, but what use is made of them is immaterial.⁵⁰

1112. Directors May Contract for Use of Bridge by Street Railway.

Where the sole purpose of a corporation is, to build a bridge to be used by the public as a means of transit, the directors of the corporation may contract for the use of their bridge for the purposes of a street railway, provided that such use shall not interfere with the use of the bridge by the public.⁵¹

1113. Distance Between Bridges.

The restriction as to the distance between bridges imposed by Sec. 31 of the Act of April 29, 1874, is repealed by the Act of April 17, 1876, P. L., 34, Sec. 7.⁵²

1114. Elevation of Bridges.

A legislative grant of the power to construct a bridge carries

(48) *Clarion Tpk. & Bridge Co. v. Clarion County*, 172 Pa., 243 (1896).

(49) *Montgomery Co. v. Schuylkill Bridge Co.*, 110 Pa., 55 (1885). The market value of the stock, plus the market value of the obligations of the company, would seem to be the proper rule.

(50) *Clarion Turnpike & Bridge Co. v. Clarion Co.*, 172 Pa., 243 (1896).

(51) *Hasson v. Venango Bridge Co.*, 11 Pa. C. C., 383 (1892).

(52) *Bridge-Water Ferry Co. v. Sharon Bridge Co.*, 145 Pa., 404; 29 W. N. C., 141 (1891); *York Haven Ferry Co.*, 4 Pa. C. C., 11 (1888); *Seneca Bridge Co.*, 11 Pa. C. C., 337 (1892); 1 D. R., 416. See Act of February 17, 1876, P. L., 6. See, also, Sec. 1117, this chapter.

with it the right to elevate the bridge to a sufficient height to avoid the dangers of ice and floods. While after its original construction the bridge may not be relocated, its elevation may be changed to the extent that experience shows to be necessary and the right to elevate carries with it, by necessary implication, the right to construct reasonable and proper approaches. Where the public convenience is increased by the elevation of the approaches of a bridge over highways in such manner as not to interfere to any appreciable extent with the public travel upon said highways, such elevation will not be enjoined as a public nuisance.⁵³

1115. Bridges Over Navigable Streams.

The right of a corporation under its charter to erect a bridge over a navigable river, necessarily includes the right to fix the number and location of its piers at the discretion of the company. The company may be responsible to an individual for an injury arising from a wanton abuse of this right, and the Commonwealth may complain when the piers are injudiciously located, but one whose boat is injured by striking against a pier cannot recover damages because of a mistake of judgment in locating the pier.⁵⁴

The Act of August 14, 1725, providing that no bridge shall be erected over any navigable stream so as to hinder navigation, applies only to bridges erected without authority of law, and cannot take from a subsequent legislature the power to authorize the construction of a bridge, with piers, over a navigable stream. A general power given to a company by act of Assembly to construct a bridge over a navigable river, when limited by no express restrictions, includes the right to construct and maintain piers in the bed of the stream, and the company is not liable for any loss sustained consequent upon the erection and maintenance of the piers, which, though in some degree an obstruction to navigation, are not for that reason alone unlawful.⁵⁵

A condition in a charter authorizing a company to build a bridge over a navigable stream, that it shall not "injure, stop or interrupt the navigation" is not broken by building the bridge in such a manner as to do as little injury to navigation as possible, as it ex-

(53) *Com. v. Pittston Ferry Bridge Co.*, 148 Pa., 621 (1892).

(54) *Jutte v. Keystone Bridge Co.*, 146 Pa., 400 (1891). See *Whittaker v. Del. & Hudson Canal Co.*, 87 Pa., 34.

(55) *Clarke v. Pitts. & Birmingham Bridge Co.*, 41 Pa., 147 (1861).

isted at the time the bridge was built. If the structure, at any time during its continuance, actually "injures, stops or interrupts the navigation" it is unauthorized, and the company is liable to the party injured for the damages thereby sustained.⁵⁶

FERRY COMPANIES.

1116. Powers of Ferry Companies.

Any ferry company, incorporated as aforesaid, shall have the right and power to erect and maintain a ferry, either of steam power or otherwise, across any of the streams or waters of this Commonwealth, subject to the right of prior occupants; and any ferry or wharf company may take and receive such charges for occupancy, storage and use and such tolls and freights for the passage of persons, vehicles, animals and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the schedule of charges and toll-sheets submitted by any such corporation, and approve the same or lessen or increase the same as seems just and proper.⁵⁷

1117. Distance Between Ferries.

The provisions of Secs. 31 and 32 of the Act of April 29, 1874, P. L., 90, prohibiting a bridge or ferry company from "exercising its corporate franchises within three thousand feet of any other bridge or ferry in actual use" were repealed by Secs. 7 and 8 of the Act of April 17, 1876, P. L., 34. There was another supplement to the Act of 1874, passed March 14, 1876, P. L., 6, which repealed the limitation of three thousand feet as to bridge companies under certain circumstances, and it was contended that this statute, which retained the limitation as to ferries, was still in force. It was held, however, that the Act of March 14 had become a part of the Act of 1874, and it was the latter, as thus amended, that was again amended by the Act of April 17, 1876.⁵⁸

(56) *Dugan v. Monongahela Bridge Co.*, 27 Pa., 303 (1856).

(57) Sec. 8, Act April 17, 1876, P. L., 36, amending Sec. 32, Act of April 29, 1874, P. L., 91.

(58) *Bridgewater Ferry Co. v. Sharon Bridge Co.*, 145 Pa., 404 (1891); *Braddock Ferry Co.'s Appeal*, 3 Penny., 32 (1882).

1118. Ferries May Be Operated by Individuals.

The right to maintain a ferry is common to all, restricted only when interfering with special grants.⁵⁹

1119. Exclusive Privileges Under Special Acts.

An act of assembly giving an exclusive privilege of maintaining a ferry and authorizing the grantee to make good and convenient landings, does not impose on him the duty of acquiring landings in fee. Where such grantee seeks to restrain others from infringing upon his exclusive rights, the latter cannot set up, as a defense, that the said grantee has failed to comply with the provisions of the act giving him the privileges.⁶⁰

An act of assembly gave A the right to maintain a ferry and to take tolls, in consideration of his keeping the ferry in repair. By a supplement passed years afterward, the Legislature gave him an *exclusive* right to maintain a ferry at such point. Held, that the original consideration was not extended to the exclusive grant, and that the Legislature might give B a right to maintain a ferry at the same point.⁶¹

A charter was refused to a proposed ferry company on the ground that its proposed landings were practically identical with those of another ferry company incorporated under a special act, with an exclusive franchise.^{61*}

1120. Obstruction of Operation of Ferries.

Where a bridge company appropriated the landing of a ferry company and built its structure across the line of the ferry, and it appears that during the interval between the beginning and the completion of the bridge the ferry would have had an earning capacity, if it had not been destroyed, the ferry company is entitled to damages for the destruction of its business, during that interval, at least.⁶²

When through the construction of a railroad bridge the travel upon a public highway is obstructed, such obstruction is a public

(59) Braddock Ferry Co.'s Appeal, 3 Penny., 32 (1882). See Greensboro Ferry Co. v. New Geneva Ferry Co., 34 Pa. C. C., 33 (1907).

(60) Appeal of Douglass et al., 21 W. N. C., 13 (1888).

(61) Johnson's Appeal, 6 W. N. C., 33 (1878).

(61*) I. Ritter & Sons Ferry Co., 14 Pa. C. C., 10 (1893).

(62) Riverton Ferry Co. v. McKeesport & Duquesne Bridge Co., 179 Pa., 466 (1897); 1 Pa. Super. Ct., 587 (1896).

nuisance, and the injury to the owner of a ferry whose landing is at the terminal of said highway cannot maintain a private action for such obstruction, his injury, though greater in degree, being of the same character as that suffered by the public at large.⁶³

A owned a ferry and held a leasehold on the landing place thereof. The defendant constructed a railroad so as to materially interfere with the landing of boats. Held, that the measure of damages for which the defendant was liable was the difference between the value of the leasehold for the purpose for which it was applied until the end of the term, under ordinary circumstances, and its value for the same time as affected by the construction of the railroad, and that it was error to allow the recovery of damages for the depreciation of the value of the franchise unconnected with the leasehold.⁶⁴

1121. Proceedings Against Ferry Companies to Forfeit Charters for Non-User.

A, B and C were owners of a ferry franchise. A and B agreed in establishing a toll bridge company, and in the consideration of one-fifth of the capital stock of the bridge company, to discontinue the ferry when the bridge was opened, reserving the right to re-establish the ferry if the bridge should be destroyed in three years. The toll bridge company opened its bridge in 1869 and kept it open until its destruction in 1879, during which time the ferry was not operated, the boats and rope being removed; but the ferry was reopened after the bridge was destroyed, and in December, 1886, a proceeding in quo warranto was instituted to test the right to continue the use of the franchise. Held, in such case, that it was not error for the court to hold that the delay to institute the quo warranto proceedings for over five years after the reopening of the ferry, and the fact that there was nothing in the case to show that since then it had failed to supply the needs of the public, entitled the defendants to judgment in their favor.⁶⁵

(63) *Pitts. & L. E. R. Co. v. Jones*, 111 Pa., 204 (1885).

(64) *Pitts. & L. E. R. Co. v. Jones*, 111 Pa., 204 (1885).

(65) *Com. v. Hulings*, 129 Pa., 317 (1889).

CHAPTER XLV.

BUILDING AND LOAN ASSOCIATIONS.

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1122. Legislative History.

The Act of October 13, 1840, provided for the incorporation of literary, charitable, religious and beneficial societies, fire engine and hose companies. The Act of April 22, 1850, extended the Act of 1840 to the incorporation of mutual savings, land and building associations, but confined its operation to the counties of Philadelphia, Schuylkill and Berks. The Act of May 7, 1855, extended the provisions of the Act of 1850, in this regard, to the counties of Lehigh, Northampton and Dauphin, and subsequent acts extended the same to other counties in the State.

It seems that these acts were repealed as to building and loan associations by the Act of April 12, 1859, P. L., 544, and that after the passage of said Act of 1859 all such corporations had to be incorporated thereunder.

The subsequent Act of February 18, 1869, P. L., 201, provided specially for the incorporation of building and loan associations in Philadelphia county. The said Acts of April 12, 1859, P. L., 544, and February 18, 1869, P. L., 201, do not appear to have ever been repealed.

The Act of May 11, 1874, P. L., 133, cures defective charters granted to building and loan associations incorporated by the Supreme Court and Courts of Common Pleas, in cases where such associations are actually operating under said charters, provided that they hold the same subject to the Constitution of 1873.¹

1123. Incorporation Provided for.

Corporations may be formed under the provisions of this act for XV. Building and loan associations.^{1*}

(1) See *Workingmen's B. & L. Assn. v. Coleman*, 8 W. N. C., 17 (1879).

(1*) Secs. 1 and 2, Act April 29, 1874, P. L., 73.

1123a. Statement of Purpose in Charter.

Accumulating a fund by the periodical contributions of the members thereof, and of safely investing the same.

1124. Corporate Powers.

Building and loan associations incorporated under the provisions of this act, shall have the powers, and from the date of the letters patent creating the same, when not otherwise provided in this act, be governed, managed and controlled as follows:

I. They shall have the power and franchise of loaning or advancing to the stockholders thereof the moneys accumulated, from time to time, and the power and right to secure the repayment of such moneys, and the performance of the other conditions upon which the loans are to be made, by bond and mortgage or other security, as well as the power and right to purchase or erect houses, and to sell, convey, lease or mortgage the same at pleasure to their stockholders, or others for the benefit of their stockholders, in such manner also that the premiums taken by the said associations for the preference or priority of such loans, shall not be deemed usurious; and so also that in case of non-payment of instalments, premiums or interest by borrowing stockholders, for six months, payment of principal, premiums and interest, without deducting the premium paid, or interest thereon, may be enforced by proceeding on their securities according to law.²

1125. Are Subject to the Supervision of the Commissioner of Banking.

Building and loan associations are made subject to the supervision of the Commissioner of Banking by Sec. 1 of the Act of February 11, 1895, P. L., 5, and are subject to examination by that officer and required to make reports to him. See Secs. 997 and 998.

1126. Capital Stock.

The capital stock of any corporation created for such purposes, by virtue of this act, shall at no time consist in the aggregate of more than one million dollars, to be divided into shares of such denomination, not exceeding five hundred dollars each, and in such numbers as the corporators may, in the application for their charter, specify: *Provided*, That the capital stock may be issued in series, but no such series shall at any issue exceed in the aggre-

(2) Sec. 37, Act of April 29, 1874, P. L., 96, Clause 1.

gate five hundred thousand dollars, the instalments on which stock are to be paid at such time and place as the by-laws shall appoint; no periodical payment of such instalments to be made exceeding two dollars on each share, and said stock may be paid off and retired as the by-laws shall direct; every share of stock shall be subject to a lien for the payment of unpaid instalments and other charges incurred thereon under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of the shares withdrawn or forfeited; the stock may be issued in one or in successive series, in such amount as the board of directors or the stockholders may determine; and any stockholder wishing to withdraw from the said corporation, shall have power to do so, by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, less all fines and other charges; but after the expiration of one year from the issuing of the series, such stockholder shall be entitled, in addition thereto, to legal interest thereon: *Provided*, That at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders, without the consent of the board of directors, and that no stockholder shall be entitled to withdraw, whose stock is held in pledge for security. Upon the death of a stockholder, his or her legal representatives shall be entitled to receive the full amount paid in by him or her, and legal interest thereon, first deducting all charges that may be due on the stock; no fines shall be charged to a deceased member's account, from and after his or her decease, unless his legal representatives of such decedent assume the future payments on the stock.³

1127. Voluntary Withdrawal of Stockholders.

Stockholders withdrawing voluntarily, shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws, any law or usage to the contrary notwithstanding; but payment of the value of stock, so withdrawn, shall only be due when the funds now by law applicable to the demand of withdrawing stockholders are sufficient to meet and liquidate the same, and then only in the order

(3) Sec. 37, Act of April 29, 1874, P. L., 69, Clause 2.

of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting, and have been then and there endorsed as to times of presentation by the officer designated by the by-laws of the association.⁴

1128. Involuntary Withdrawal.

The by-laws may provide for the involuntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: *Provided*, That such withdrawal and cancellation shall be pro rata among the shares of the same series of stock: *And provided further*, That not less than legal interest shall be credited and allowed to each share so withdrawn and cancelled.⁵

1129. Officers.

The number, titles, functions and compensation of the officers of any such corporation, their terms of office, the times of their elections, as well as the qualifications of electors, and the ratio and manner of voting, and the periodical meetings of the said corporation, shall be determined by the by-laws, when not provided by this act.⁶

1130. Loans to Stockholders.

The said officers shall hold stated meetings, at which the money in the treasury, if over the amount fixed by charter as the full value of a share, shall be offered for loan, in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share, for each share of stock held by such stockholder: *Provided*, That a stockholder may borrow such fractional part of the amount fixed by charter as the full value of a share as the by-laws may provide; good and ample security, as prescribed by the by-laws of the corporation, shall be given by the borrower, to secure the repayment of the loan; in case the borrower shall neglect to offer security, or shall offer security that is not approved by the board of directors, by such time as the by-laws may prescribe, he or she shall be charged with legal interest, together

(4) Sec. 2, Act of April 10, 1879, P. L., 16.

(5) Sec. 3, Act of April 10, 1879, P. L., 16.

(6) Clause 3, Sec. 37, Act April 29, 1874, P. L., 96.

with any expenses incurred, and the loss in premium, if any, on a resale, and the money may be resold at the next stated meeting; in case of non-payment of instalments for interest by borrowing stockholders, for the space of six months, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced, by proceeding on their securities according to law.⁷

1131. Repayment of Loans.

A borrower may repay a loan at any time, and in case of the repayment thereof before the maturity of the shares pledged for said loan, there shall be refunded to such borrower (if the premiums, bonus or interest shall have been deducted in advance) such proportions of the premiums, bonus or advance interest bid as the by-laws may determine: *Provided*, That in no case shall the association retain more than one one-hundredth of said premiums or bonus for each calendar month that has expired since the date of the meeting upon which the loan was made, or if interest in advance, it shall retain only the interest due on the loan up to the time of settlement: *And further provided*, That such borrower shall receive the withdrawing value of the shares pledged for said loan, and the shares shall revert back to the association.⁸

1132. Collection of Premiums, Fines and Interest.

No premiums, fines or interest on such premiums, that may accrue to the said corporation, according to the provisions of this act, shall be deemed usurious; and the same may be collected as debts of like amount are now by law collected in this Commonwealth.⁹

1133. Limitation of Fines.

Fines or penalties for the non-payment of instalments of dues, interest and bonus or premium, shall not exceed two per centum per month on all arrearages.¹⁰

1134. Omission to Elect Officers Not to Work Dissolution.

No corporation or association created under this act shall cease

(7) Clause 4, Sec. 37, Act April 29, 1874, P. L., 96.

(8) Sec. 4, Act April 10, 1879, P. L., 16.

(9) Clause 6, Sec. 37, Act April 29, 1874, P. L., 97.

(10) Sec. 6, Act of April 10, 1879, P. L., 16.

or expire, from neglect on the part of the corporators to elect officers at the time mentioned in their charter or by-laws; and all officers elected by such corporation shall hold their offices until their successors are duly elected.¹¹

1135. May Purchase and Convey Real Estate on Which They Have Incumbrances.

Any loan or building association incorporated by or under this act, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, judgment, lien or other incumbrance, or ground rent, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold or be entitled to at the passage of this act, to sell, convey, lease or mortgage, at pleasure, to any person or persons whatsoever, and all sales of real estate heretofore made by such associations to any person or persons not members of the association so selling, are hereby confirmed and made valid.¹²

1136. May Purchase and Convey Other Real Estate.

All such corporations shall have full power to purchase lands and to sell and convey the same, or any part thereof, to their stockholders or others in fee simple, with or without the reservation of ground rents, but the quantity of land purchased by any one of said associations hereafter incorporated, shall not, in the whole, exceed fifty acres; and in all cases the lands shall be disposed of within ten years from the date of the incorporation of such associations respectively.¹³

1137. May Sell, Assign or Extinguish Ground Rents.

All land and building associations are hereby authorized to make sale of, and assign or extinguish, to any person or persons, the ground rents created as aforesaid.¹⁴

1138. May Convey Lands After Expiration of Charter.

All deeds of conveyance of lands situate within this Common-

(11) Clause 7, Sec. 37, Act April 29, 1874, P. L., 97.

(12) Clause 8, Sec. 37, Act April 29, 1874, P. L., 98.

(13) Clause 9, Sec. 37, Act April 29, 1874, P. L., 98.

(14) Clause 10, Sec. 37, Act April 29, 1874, P. L., 98.

wealth made by any savings fund, building or loan association after the term for which it was incorporated shall have expired, shall be as good and effectual, and have the same force and effect for passing title to the lands so conveyed as though executed during the period of its chartered existence.¹⁵

1139. Confirmation of Sales of Land Heretofore Made.

All purchases of land heretofore made by building and loan associations, incorporated by virtue of any law of this Commonwealth, and also all sales of the same made by them to their stockholders or others are hereby confirmed, and the titles of said associations and their vendees are hereby declared good and valid, to all intents and purposes; and the said associations, their successors or assigns, may sell, convey or lease, at pleasure, at any time within five years from the passage of this act, the undisposed-of portions of real estate so hereto purchased.¹⁶

1140. May Receive in Writing Bids of Premiums for Priority.

It shall be lawful for any mutual savings fund or building and loan association now incorporated or hereafter to be incorporated, to receive bids of premium, or bonus, for the preference or priority of loan, in writing, whether from members, or from persons who are not members, but intend to become such if loans are obtained by them, or to receive such bids from others duly authorized, in writing, by members or by persons intending to become such, so to bid: *Provided*, That such bids shall be received only in open meetings, as bids are now required by law to be received. And the directors of such associations may establish rules and regulations, not inconsistent herewith, for the receiving of such bids and the allotment of loans to the persons making or authorizing such bids; and all such bids heretofore accepted by any such association, and loans made thereon, are hereby confirmed and made valid; and no premium or bonus heretofore collected, or which may be hereafter payable on such loans, shall be deemed usurious by reason of the fact that any such bid was made or authorized in writing.¹⁷

(15) Sec. 1, Act April 17, 1876, P. L., 41.

(16) Sec. 1, Act June 17, 1878, P. L., 214.

(17) Act of June 4, 1901, P. L., 403.

1141. Premiums for Priority in Receiving Loans May Be Received in Instalments.

It shall be lawful for any mutual savings fund, or building and loan association now incorporated or hereafter to be incorporated, in addition to dues and interest, to charge and receive the premium or bonus bid by a stockholder for preference or priority of right to a loan in periodical instalments; and such premium or bonus so paid in instalments shall not be deemed usurious, but shall be taken to be a payment as it falls due, in contradistinction to a premium charged and paid in advance; and in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage or custom to the contrary notwithstanding. It shall also be lawful for any mutual savings fund or building and loan association to charge and deduct interest in advance, in lieu of premiums for preference or priority of right to a loan: *Provided*, That the certificate of incorporation of each association hereafter to be incorporated, and the certificate to be provided in section nine of this act for those heretofore incorporated, shall set forth whether the premium or bonus bid for the prior right to a loan shall be deducted therefrom in advance or paid in periodical instalments, or whether interest in advance shall be deducted from the loan in lieu of premium or bonus.¹⁸

1142. Enforcement of Payments of Instalments, Premiums, Etc.

In case of non-payment of instalments of stock, premiums, dues or interest, by borrowing stockholders, for the space of six months, payment of the same, together with the full principal of the loan, may be enforced by proceeding on their securities according to law; and the moneys so recovered shall be paid into the treasury of the association for such uses (loans or otherwise) as may be deemed proper by the association; and if the said moneys so recovered, together with the withdrawal value of the shares of such defaulting borrower shall exceed the amount it would have required according to the preceding section, to have voluntarily repaid the loan, together with all the expenses incurred by the association, such excess shall be repaid to such defaulting borrower.¹⁹

(18) Sec. 1, Act of April 10, 1879, P. L., 16.

(19) Sec. 5, Act of April 10, 1879, P. L., 16.

1143. Married Women May Hold Stocks—Their Rights as Stockholders Defined.

It shall be lawful for any married woman of full age to hold stock in any of said saving funds, building or loan associations; and as such stockholder, she shall have all the rights and privileges of other members, including the right to borrow money from said associations and bid premiums therefor, and shall also have the right and power to secure such loan by transferring her said stock or other securities to said association, from which the same was borrowed, or by executing bond and mortgage upon her separate real estate to secure said loan: *Provided, however,* That the husband of such married woman join in the execution of such bond and mortgage; and such married woman shall also have the right to sell, assign and transfer her said stock or withdraw the same, without joining the husband in such transfer or withdrawal; and it shall be lawful for any such savings fund, building or loan association to collect such loan made to such married woman, including the dues, interest, premium and fines, as loans made by such associations to other members are now by law collected, and such stock or interest in such stock, shall not be liable for the debts of any husband of such married woman.²⁰

1144. Acceptance of Act of April 10, 1879 (P. L., 16).

Mutual savings fund, or building and loan associations, heretofore incorporated under the provisions of any law, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act, upon filing with the Secretary of the Commonwealth a certificate of their acceptance of the same in writing, under the duly authenticated seal of said association, which certificate shall also prescribe their mode or plan of charging premiums, bonus or advance interest, as set forth in the first section of this act; and upon such acceptance and approval thereof by the Governor, he shall issue letters patent to said corporation reciting the same.²¹

1145. Limitation of Investments.

The act relative to investments by building associations, approved May eight, one thousand eight hundred and fifty-five, shall be so construed as to extend to savings fund associations incor-

(20) Sec. 7, Act of April 10, 1879, P. L., 16.

(21) Sec. 9, Act of April 10, 1879, P. L., 16.

porated by the Courts of Common Pleas, under an act entitled "A supplement to an act to prevent waste in certain cases within this Commonwealth," passed the twenty-ninth day of March, one thousand eight hundred and twenty-two, to land and building associations, etc., approved April twenty-second, one thousand eight hundred and fifty: *Provided*, That no company, incorporated under the last recited act, or any supplements thereto, shall invest its capital stock, assets or money in the purchase or discount of any promissory note, bill of exchange or other negotiable paper, nor the stock of any incorporated company, nor receive moneys on deposit other than the regular contributions of the members thereof.²²

1146. May Borrow Money on Collateral and Loan to Stockholders.

In addition to the corporate powers conferred on building and loan associations by the thirty-seventh section of the Act of April twenty-ninth, one thousand eight hundred and seventy-four, they shall have the right, when a series of stock has matured, or when applications for loans by the stockholders thereof shall exceed the accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any one time twenty-five per centum of the withdrawal value of the stock issued by said association at a rate of interest less than six per centum, and secure the payment of the same by interest-bearing order, note or bond as collateral; said loans to be repaid out of the accumulations in the treasury, as soon as sufficient is paid in and there is no demand therefor by borrowing stockholders.²³

1147. Incorporation of Building and Loan Associations in Philadelphia County.

On the petition of any twelve or more citizens of Pennsylvania, the Court of Common Pleas of the county of Philadelphia shall have all powers conferred by the acts relating to loan and building associations, to incorporate them and their associates as a perpetual corporation, for the purposes following, to-wit: to purchase, hold and build upon and sell in fee simple, houses and lots in the city of Philadelphia, and also to make loans on bonds and

(22) Sec. 1, Act of May 8, 1857, P. L., 437.

(23) Act of June 25, 1895, P. L., 303, amending Sec. 1, Act of June 2, 1891, P. L., 174.

mortgages to others to build and improve, and the same to sell and assign, and to borrow moneys upon bonds and mortgages or otherwise for said purposes; and in making sales or leases or loans on mortgages, it shall be lawful for such corporation, and borrowers of them, to agree upon, and insert in the deeds of conveyance, a condition against the use of any granted or leased premises for the sale of any intoxicating liquors, or unlawful immoral purposes, the carrying on any noxious or unhealthful business, with right of re-entry for breach of such condition: *Provided*, That no corporation chartered under this act shall have a greater capital than one-half million dollars, and shall stipulate by their articles to devote their capital to improve or promote the improvement of parts of said city most needing physical, healthful and moral reform, which shall be defined and prescribed in its charter and not exceed eight main squares, and shall apply all their profits, over their expenses, and a return of eight per centum per annum to the shareholders to and for the construction of substantial stone, or brick or iron habitations for homes for respectable persons of limited means, either as lessees or purchasers: *And provided*, That the said court shall be satisfied of the benevolent purposes of the petitioners; and that the Legislature may at any time repeal this act, and such charters, if the powers hereby granted should be found prejudicial to the community, but in manner to do no injustice to the corporators.²⁴

1148. Bringing of Suits After Expiration of Charter.

All building, saving and loan associations may bring and maintain suits, and carry on those already brought, in their corporate names, on all judgments, bonds, mortgages, notes or other evidences of debt or obligations due them, or for monthly dues, interest or any demand owing to them, and proceed to judgment and execution, notwithstanding their charter may have expired; and the officers last elected, or the survivors of them, shall be the officers to represent said corporations for such purpose; and if no officers survive, the stockholders may elect others under their by-laws.²⁵

(24) Act February 18, 1869, P. L., 201. See *In re Association*, 10 Phila., 106 (1869).

(25) Sec. 1, Act April 26, 1869, P. L., 1223. This provision is still in force in Philadelphia county. See *Cooper v. Oriental Savings & L. Assn.*, 100 Pa., 402 (1882).

1149. The Foregoing Provision Applicable Only in the City of Philadelphia.

This act shall only be construed so as to enable said associations to collect up and divide their assets and wind up their affairs, and not to allow them to transact new business: *Provided*, That this act shall only apply to the city of Philadelphia.²⁶

1150. May Purchase Lands for Squaring Their Grounds.

Should any of the associations now or hereafter incorporated deem it necessary or expedient to purchase adjoining lands, for the purpose of squaring their grounds in conformity with the streets running through or touching their lands, they are hereby fully authorized to make such purchases, and are invested with all the powers as regards the sale and conveyance in fee simple of the same given by this act, over the grounds squared by such purchases.²⁷

1151. Taxation—Exemption from Bonus and Tax on Capital Stock.

The bonus or tax due to the Commonwealth upon the capital stock of corporations, as provided for by Act of first of May, one thousand eight hundred and sixty-eight, or by any other act, shall not apply to or be due from mutual savings fund, or building and loan associations; nor shall the registry for corporations, prescribed in the first section of the Act of first of May, one thousand eight hundred and sixty-eight, the first section of the Act of twenty-fourth of April, one thousand eight hundred and seventy-four, and the twenty-sixth section of the Act of twenty-ninth of April, one thousand eight hundred and seventy-four, apply to or be required of mutual savings fund, or building and loan associations.²⁸

1152. Further Exemption from Taxation.

Mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for State purposes on their capital stock or mortgages and other securities for moneys loaned to their members; but the real estate owned by

(26) Sec. 2, Act April 26, 1869, P. L., 1223.

(27) Act of March 7, 1853, P. L., 155, Sec. 3.

(28) Sec. 8, Act April 10, 1879, P. L., 16. Registration is now required, since the paid-up shares are taxable. See Sec. 845.

said association shall be subject to the same rates of taxation as the real estate of other corporations and persons: *Provided, however*, That the right of the Commonwealth to collect taxes is hereby reserved.²⁹

1153. Paid-Up Shares.

Building and loan associations may lawfully issue full-paid stock, the dividends of which are not guaranteed but are limited in amount and payable out of the profits only, the holders thereof being entitled to no preference over other stockholders upon distribution in case of loss or insolvency, provided that the issue of such stock is incidental to the principal business of the association and intended to furnish funds from which loans may be made to the holders of installment stock.³⁰

1154. Regulation of Foreign Mutual Savings Fund or Building and Loan Associations Doing Business Within the State—Certificate from the Commissioner of Banking.

From and after the first day of September, one thousand nine hundred and one, no mutual savings fund, building, building and loan, or co-operative loan association or corporation, or other association, company or corporation, by whatsoever name it may be called, claiming to have the right under its charter to take premiums for the preference or priority of loans, incorporated under the laws of any other State or foreign government, shall do any business within this Commonwealth without having fully complied with the requirements of this act, and without first having received a certificate from the Commissioner of Banking, certifying that it has fully complied therewith, and authorizing it to do business in this Commonwealth; and no person shall act as agent, solicitor or local treasurer of any such association, company or corporation, within this Commonwealth, in any manner whatsoever relating to the sale of stock of such association, company or corporation, soliciting subscriptions or receiving payments therefor, soliciting applications for loans or receiving payments on account of dues, fines or premiums upon stock or loans, or in any manner relating to the business usually transacted by such associ-

(29) Act of May 22, 1883, P. L., 39.

(30) *Folk v. State Capital Savings and Loan Association*, 214 Pa., 529 (1906). For taxation of paid-up shares, see Sec. 845.

ation, company or corporation, until such association, company or corporation shall have received such aforesaid certificate from the Commissioner of Banking, and until such agent, solicitor or local treasurer shall himself have received a certificate from said Commissioner, authorizing him to act on behalf of such association, company or corporation: *Provided*, That any such association, company or corporation, doing business within this Commonwealth prior to the first day of September, one thousand nine hundred and one, and having prior to said date stock and loans, or either thereof, outstanding in this Commonwealth, may continue, either directly or through its agents, to collect instalments, interest, dues and premiums thereon; but the issuing of any new stock, soliciting subscriptions therefor, placing new loans, or soliciting applications therefor, or receiving payments on account of instalments, dues, fines, interest or premiums upon such new stock or loans, or transacting any other business within this Commonwealth other than such as relates to stock issued or loans made prior to said date, shall be deemed a violation of this section.³¹

1155. Not to do Business Until Commissioner of Banking Is Satisfied of Their Solvency, and They Have Deposited \$100,000 Each as Security.

No association, company or corporation described in the first section of this act shall be authorized by the Commissioner of Banking to do business within this Commonwealth until it shall satisfactorily appear to said Commissioner that such association, company or corporation is solvent, and has deposited with some trust company of this Commonwealth, to be approved by said Commissioner, the sum of at least one hundred thousand dollars in bonds of the United States, of the State of Pennsylvania, or of cities, counties, boroughs or school districts of this Commonwealth, as security for the creditors and shareholders thereof residing in this Commonwealth. None of the securities so deposited shall be withdrawn by any such association, company or corporation without the permission of said Commissioner, in writing and under the seal of his office, and no such withdrawal shall be permitted which will reduce the amount so deposited to less than the sum of one hundred thousand dollars. Exchanges of such bonds may be made, from time to time, with the approval

(31) Sec. 1, Act May 11, 1901, P. L., 153.

of the Commissioner of Banking; and if any of said bonds are called in for payment, the proceeds thereof shall remain in the hands of the depository until other bonds of the classes above mentioned shall be substituted, in like amount, for the bonds so paid, whereupon such depository shall, with the permission in writing of the said Commissioner, pay over such proceeds to the association, company or corporation depositing said bonds.³²

1156. Proceedings on Discontinuing Business in the State.

When any such association, company, or corporation shall desire to discontinue its business within this Commonwealth, it may apply to the Court of Common Pleas of Dauphin county, by petition, setting forth its resources and liabilities within and without this Commonwealth, and particularly its liabilities to creditors and shareholders within this Commonwealth; and thereupon, after due hearing, of which hearing the Commissioner of Banking shall have such notice as the said court may determine, the said court may make such order as will permit the withdrawal of said bonds or a part thereof, and will at the same time fully protect the rights of all creditors and shareholders of such association, company or corporation residing in this Commonwealth.³³

1157. Trust Companies Acting as Depositories Under the Act to Make Reports to Commissioner of Banking.

Trust companies, acting as depositories under this section, shall pay over the income of the bonds deposited with them, as aforesaid, to the association, company or corporation depositing them, and shall make report in writing, signed and sworn to by the president or treasurer thereof, to the Commissioner of Banking, semi-annually, on the first day of January and first day of July in each year, setting forth the amounts and kinds of bonds deposited with them, as aforesaid, and by what association, company or corporation the same have been deposited; and for failure to make such report within thirty days after the time fixed, as aforesaid for making such reports, such trust company shall be liable to a penalty of fifty dollars, to be recovered in the name of the Commonwealth as other penalties are by law recoverable, and the amount so recovered shall be paid into the State treasury. The

(32) Sec. 2, Act May 11, 1901, P. L., 153.

(33) Sec. 2, Act May 11, 1901, P. L., 153.

trust company selected by any such association, company or corporation as its depository of bonds, under this section, may be changed from time to time by such association, company or corporation, with the approval in writing of the Commissioner of Banking.³⁴

1158. Application for Certificate Authorizing to do Business in Pennsylvania.

Any association, company or corporation described in the first section of this act, desiring a certificate authorizing it to do business within this Commonwealth, shall present to the Commissioner of Banking its application, under its seal, therefor, accompanied by a statement, subscribed and sworn or affirmed to by its president or other principal officer and its treasurer, setting forth, in such form and in such detail as the said Commissioner may prescribe, its resources and liabilities; and said Commissioner may, before issuing such certificate, require such further information under oath or affirmation, as he may deem necessary for the purpose of fully ascertaining the solvency of such association, company or corporation; and such application shall be further accompanied by a fee of one hundred dollars, which fee said Commissioner shall, immediately upon the issuing of such certificate, pay into the State treasury.³⁵

1159. Stipulation in Regard to Service of Process.

No such association, company or corporation shall receive such certificate, authorizing it to do business within this Commonwealth, or do business therein, until it has filed with said Commissioner a written stipulation under its seal, agreeing that any legal process affecting such association, company or corporation, served on the Commissioner of Banking or a person designated by him, or an agent designated in said stipulation to receive service of process for said association, company or corporation, shall have the same effect as if actually served on such association, company or corporation within this State; and if such association, company or corporation should cease to maintain such agent in this State, so designated, such process may thereafter be served on the Commissioner of Banking or on the person desig-

(34) Sec. 2, Act May 11, 1901, P. L., 153.

(35) Sec. 3, Act May 11, 1901, P. L., 153.

nated by him ; but so long as any liability of such stipulating association, company or corporation to any resident of this State continues, such stipulation shall not be revoked or modified, except that a new one may be substituted, for the purpose of designating a different person to receive such service of process ; and the term process, as used herein, shall include all process whatever, whether mesne or final, and all rules, notices, order or decrees in any judicial proceeding whatsoever, within this Commonwealth. And any such process may be served in any county of this Commonwealth in which the president or other principal officer, secretary, treasurer or general manager, of such association, company or corporation, or the Commissioner of Banking, the person designated by said Commissioner, or the agent designated in said stipulation to receive service of process for such association, company or corporation, resides or may be found ; and for the purpose of effecting such service, the sheriff, constable or other officer to whom such process is directed, may deputize the sheriff, constable, or other officer, in the county in which such president or other principal officer, secretary, treasurer or general manager, the person designated by the Commissioner of Banking, or the agent designated in said stipulation, resides or may be found, or of the county in which the office of the Commissioner of Banking is located, to serve the same ; and the fees of the officer serving such process shall be the same as are allowed by law for the service of similar process in other cases, together with mileage allowed by law in such cases, the distance to be computed from the residence of the officer serving or executing such process, and no further.³⁶

1160. Certificate for Authorized Agent.

Any association, company or corporation, described in the first section of this act and authorized to do business within this Commonwealth may, from time to time, designate to the Commissioner of Banking, in writing and under its seal, any agents, solicitors or local treasurers whom it desires to have authorized to do business for it within this Commonwealth ; and thereupon the said Commissioner shall issue a certificate to each of said agents, solicitors or local treasurers, authorizing him to act on behalf of such association, company or corporation. A fee of one dollar shall

(36) Sec. 3, Act May 11, 1901, P. L., 153.

be paid to the Commissioner of Banking for every such certificate. Each certificate issued under this section shall expire at the end of one year from its date, and may, upon the payment of a like fee, be renewed from year to year, until said Commissioner has been notified that the authority of such agent, solicitor or local treasurer has been revoked by the association, company or corporation appointing him. All fees collected by the Commissioner of Banking under this section shall be paid by him into the State treasury.³⁷

1161. License Fee of \$100 Payable Annually.

Every association, company or corporation described in the first section of this act and authorized to do business within this Commonwealth shall, annually, upon the first Monday of May, pay into the State treasury a license fee of one hundred dollars; and in case of neglect or refusal by any such association, company or corporation to pay the same, as aforesaid, into the State treasury, at the time aforesaid, the Auditor General shall settle an account against such association, company or corporation for the amount due and payable by it as aforesaid, and shall proceed to collect the same, in the same manner and under the same penalties as are provided for the collection of taxes and penalties under existing laws.³⁸

1162. Proceedings in Case of Fraud, Insolvency or Irregularity.

Whenever it shall appear to the Commissioner of Banking that any association, company or corporation, described in the first section of this act and authorized to do business within this Commonwealth, is insolvent or is conducting its business fraudulently, or is in any manner doing business contrary to the laws of this Commonwealth governing domestic building and loan associations, it shall be the duty of said Commissioner to communicate the facts to the Attorney General, whose duty it shall then be to apply to the Court of Common Pleas of the county of Dauphin, or in vacation to any of the judges thereof, for an order requiring said association, company or corporation to show cause why its certificate, authorizing it to do business within this Commonwealth, should not be revoked. Upon the return of said order,

(37) Sec. 4, Act May 11, 1901, P. L., 153.

(38) Sec. 5, Act May 11, 1901, P. L., 153.

the said court shall hear the allegations and proofs of the respective parties, and if it shall thereupon appear that said association, company or corporation is insolvent or is conducting its business fraudulently, the said court shall make an order revoking such certificate; but if it shall appear that such association, company or corporation is doing business contrary to law, but without any fraudulent intent, the said court may either revoke such certificate or make such other order as to it may seem meet and proper. Immediately upon the granting by said court of any order revoking the certificate authorizing any such association, company or corporation to do business within this Commonwealth, it shall be the duty of the Commissioner of Banking to revoke all certificates granted to agents, solicitors or local treasurers of such association, company or corporation, and to notify, in writing, such agents, solicitors and local treasurers of such revocation.³⁹

1163. Penalty for Doing Business Without a Certificate From the Commissioner of Banking.

Any association, company or corporation described in the first section of this act, doing business within this Commonwealth without having first received from the Commissioner of Banking a certificate authorizing it so to do, or, having received such certificate, doing business within this Commonwealth after five days from the date of mailing a notice of the revocation of such certificate by the Commissioner of Banking to the principal office of such association, company or corporation, shall be subject to a penalty of five hundred dollars for each month or fraction thereof during which such illegal business is transacted, to be recovered, in the name of the Commonwealth, either by an action of assumpsit or by foreign attachment, and shall be prohibited from doing business within this Commonwealth until such penalty is, or penalties are, fully paid. Any person violating the provisions of the first section of this act, or any person acting as agent, solicitor or local treasurer of any such association, company or corporation after its certificate authorizing it to do business within this Commonwealth has been revoked, and knowing that the same has been revoked, shall be guilty of a misdemeanor; and upon conviction thereof shall be sentenced to pay a fine of not less than

(39) Sec. 6, Act of May 11, 1901, P. L., 153.

fifty dollars nor more than five hundred dollars, and upon conviction of a second offense shall be sentenced to pay a like fine and undergo an imprisonment not exceeding one year, or either, in the discretion of the court.⁴⁰

1164. Foreign Building and Loan Associations May Not Collect More Than Legal Interest.

The powers and immunities granted to domestic building and loan associations incorporated under the Act of April 29, 1874, and its supplements do not extend to corporations not chartered under that legislation. Hence when a Pennsylvania corporation acting as trustee for a foreign building and loan association loans money to a citizen of Pennsylvania upon a mortgage on lands in that State, the contract being a Pennsylvania contract, the foreign corporation can recover the amount of the loan and legal interest only.⁴¹

(40) Sec. 7, Act May 11, 1901, P. L., 153.

(41) *Land Title & Trust Co. v. Fulmer*, 24 Pa. Super. Ct., 256 (1904).

CHAPTER XLVI.

CEMETERY COMPANIES.

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| Organized for Profit May Hold | Townships or Boroughs—Pur- |
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| 1170. Transfer of Lots on Books | 1176. Exemption From Taxation. |
| of Cemetery Companies. | |

1165. Incorporation Authorized.

Corporations may be formed under the provisions of this act for VII. The maintenance of a public or private cemetery.¹

Courts of Common Pleas may incorporate cemetery companies under the provisions of the seventh clause, of corporations of the first class, of the Act of April 29, 1874. The application need not designate the place where the cemetery is to be located.²

1166. Cemetery Companies Not Organized for Profit May Hold Property in Trust for Certain Purposes.

Any cemetery company which is now, or may hereafter be incorporated in this State, whose places of burial are not used for the purposes of corporate profit, may take and hold any grant, donation, or bequest of property upon trust to apply the same, or the income thereof, under the direction of the board of managers,

(1) Secs. 1 and 2, Act of April 29, 1874, P. L., 73.

(2) Oakland Cemetery Co., 12 Pa. C. C., 145 (1891). See *In re Lutheran Church*, 6 Montg. Co. Rep., 13; *Lake Wynola Assn.*, 3 Pa. C. C., 626.

for the embellishment of the said cemetery, or for the erection, repair, preservation or renewal of any tomb, monument or grave-stone, fence, railing or other erection, or for the planting and cultivation of trees, shrubs, flowers or plants, in or around any cemetery lot, or for improving the said premises in any other manner or form consistent with the design and purpose of the act of incorporation, according to the terms of such grant, donation or bequest.³

1167. Investment of Grants of Money.

All grants, donations or bequests of money, which shall be made in accordance with the provisions of the foregoing section, the annual income of which only is directed by the terms of such grant, donation or bequest to be applied to any of the purposes set forth in said section, shall be invested by said board of managers, either in ground rents, mortgages upon otherwise unincumbered real estate, or the stocks or loans of this Commonwealth or of the United States; and the said managers shall not be responsible for their conduct of such trust, except for good faith and such reasonable diligence as may be required of mere gratuitous agents: *Provided*, That the said managers shall in no case be obliged to make any separate investment of any sum so given, and that the average income derived from all funds of the like nature entrusted to the corporation shall be divided and apportioned annually to the credit of said lot or parcel of lots entitled thereto, and the same be expended in accordance with the direction of intention of the donor or grantor.⁴

1168. Legalizing Dispositions in Perpetuity for the Care of Burial Places.

No disposition of property hereafter made for the maintenance or care of any cemetery, churchyard or other place for the burial of the dead or of any portion thereof, or grave therein, or monuments or other erections on or about the same, shall fail by reason of such disposition having been made in perpetuity, but said disposition shall be held to be made for charitable use.⁵

(3) Sec. 1, Act of May 14, 1874, P. L., 165. See Sec. 1169.

(4) Sec. 2, Act of May 14, 1874, P. L., 165.

(5) Act of May 26, 1891, P. L., 119.

1169. Cemetery Companies May Accept Gifts, Devises or Bequests in Trust.

On and after the passage of the act, it shall and may be lawful for any duly incorporated burial or cemetery company within this Commonwealth, and said companies are hereby authorized and empowered to accept from any person or persons, by the terms of any deed, will or otherwise, any gift, devise or bequest in trust for the uses and purposes of keeping in good order and repair the family burial lots, monuments, vaults, tombs, graves and lot improvements, as well as for the planting of flowers, trees or shrubbery, or general decoration with flowers, of any such lots or graves of such grantors or devisors. But this power and authority shall not extend to any other uses or purposes whatever: *Provided, however,* That such burial or cemetery company, upon receipt of any such gift, devise or bequest, shall report the same to the Court of Common Pleas of the proper county, and obtain the approval of the court as to the investment of the same, when such gift, devise or bequest requires a principal sum of money to be held in trust by such company.⁶

1170. Transfer of Lots on Books of Cemetery Companies.

Lots in cemeteries, owned by corporations of the first class within this Commonwealth, may be transferred upon the books of the proper corporation, with the consent of the managers or directors thereof, and such transfers shall be as good and valid in law as if the deeds were duly acknowledged and recorded in the office for recording deeds, et cetera, in the proper county.⁷

1171. Change of Location of Cemeteries Located in Cities, Townships or Boroughs—Purchase of New Grounds.

Whenever any incorporated or unincorporated church, cemetery or burial association, owns grounds located wholly or in part in any city, township or borough in this Commonwealth, and by reason of the growth thereof and the consequent increasing number of interments, as well as for sanitary purposes, it is deemed necessary or desirable in the opinion of said church, cemetery or burial association to change the location thereof, or if by reason of the opening of streets, roads or public passages

(6) Act of May 16, 1891, P. L., 88.

(7) Act of June 19, 1901, P. L., 574.

around or through the same, a portion of their property has become angular and partially surrounded by improvements, making it necessary or advisable to circumscribe the area and remove the dead to other parts thereof, or if by reason of the proximity of adjacent property, the further interment of the dead may, in the interest of public health, be prohibited in any part or parts of the grounds belonging to any church, cemetery or burial association aforesaid, it shall be lawful for such incorporated or unincorporated church, cemetery or burial association, and they are hereby authorized and empowered to purchase new and more suitable ground in the vicinity, of such extent and area as they shall deem expedient, for the burial of the dead, and to purchase from the holders of lots in their own grounds the said lots, whether interments have been made in them or not, and to provide for the reinterment of bodies that may be buried in any of the lots so purchased by them.⁸

1172. Removal of the Dead to New Locations.

And the board of managers, trustees, or other officials in whom is vested the management of the affairs of such church, cemetery or burial association, are also hereby authorized and empowered to contract and agree with the owners of the lots in which interments have been made, to remove from the said lots the dead to such new locations, or other part of the grounds appropriated or selected for their interment, upon such terms as may or can be mutually agreed upon. And in case any bodies have been interred in single graves, and the relatives of the deceased or the holders of the lots in which the interments are made cannot after diligent search by the said board of managers, trustees or other officials be found, such bodies may be removed by the aforesaid managing officials to other places of interment in the grounds of the said church, cemetery or burial association in which the bodies are interred, if the expense of such removals, enclosures and improvements be borne by the said church, cemetery or burial association; and upon the said removals being made, the ground from which the bodies so removed shall revert to and become the property of the church, cemetery or burial association making such re-

(8) Act of June 7, 1895, P. L., 181, amending the Act of June 6, 1893, P. L., 325, which said Act of 1893 was amendatory of the Act of May 6, 1891, P. L., 118.

moval, and be taken and considered as if the same had never been sold by the said church, cemetery or burial association for the purpose of interment, or any other purpose whatsoever. And in case the holders of lots in which no interments have been made cannot, after diligent search by the managing officials above mentioned, be found, then the said managing officials may, in their discretion, assign to the said owners other parts of their grounds, equal in value to the said lots the owners of which cannot be found, or the said managing officials may set apart, or hold in trust for the owners of said lots who cannot be found, a sum, not less than the original price paid for said lots by the said owners, and shall hold and securely keep the said sum so set apart for the benefit of said owners, to be paid to them whenever they shall call for the same, and thereupon, as soon as lots equal in value have been set apart or marked on the books of the said church, cemetery or burial association, as having been assigned to the said owners who cannot be found, or as soon as the said managing officials shall set apart the sum above mentioned for the benefit of said owners, then, and in that case, the lots originally held by said owners shall revert to and become the property of the church, cemetery or burial association in whose grounds the same are located, as if the same had never been sold for the purpose of interment or any other purpose whatsoever. And such incorporated or unincorporated church, cemetery or burial association is hereby further authorized and empowered to sell and convey in fee simple, and unrestricted as to use, all such portions of their lands not used or conveyed by them for burial purposes, or which shall have been reconveyed to them, or shall have reverted or become acquired by them, as hereinbefore authorized, and from which all bodies shall have been removed, and to make, grant and deliver in the customary form, a deed or deeds for the same to the purchaser or purchasers free, clear and discharged of any use, trust or limitation whatsoever.⁹

1173. Church Officers May Petition Court for Leave to Abandon Burying Ground.

The trustees, treasurer or other proper officers of any church, congregation, presbytery or other church organization, owning real estate used as a burying ground, may whenever so desired by

(9) Act of June 7, 1895, P. L., 181, amending acts as stated in the preceding note.

a majority vote of such church, congregation or church organization, owner or owners as aforesaid, apply by petition to the court of Common Pleas of the county, wherein such real estate may be located, for leave to abandon such burying grounds, remove and re-inter the bodies of deceased persons therein buried, and to sell such real estate in fee, clear of all restriction. Upon presentation of such petition, the court shall make such order relating to publication and notice to parties in interest as may seem meet and proper, and, after final hearing of all parties in interest, may make such decree relating to the abandonment of such grounds for burial purposes, the removal of bodies therefrom and the sale thereof as may be just and equitable; and, when no person in interest can be found, said bodies to be removed and separately reinterred in some suitable burying ground, and each grave to be properly marked by head-stone, et cetera (provided such grave was so marked before removal), by the trustees, treasurer or other proper officer or officers of the church, congregation, presbytery or other church congregation, owning the real estate so used as a burying ground: *Provided*, That no such petition shall be granted except upon condition set forth in the decree, requiring the petitioners to purchase the rights of all lot holders in such burying grounds, and to secure the consent in writing of the near relatives of decedents, whenever such relatives shall appear as parties to such proceedings: *And provided further*, That any party in interest may appeal from the decree of such court within thirty days.¹⁰

1174. Transfer of Cemeteries to Borough Authorities.

Upon petition of the managers and officers of any incorporated cemetery company, and a majority of the taxables of the borough to which it is proposed to transfer such cemetery, the said court may authorize the transfer of any cemetery to the borough authorities of any borough in which such cemetery may be located or adjacent thereto; and such transfer shall be made without cost to such borough and upon such transfer being made such borough authorities shall hold and exercise the power and privilege of such incorporated company, and may purchase lands within or beyond such borough limits, not to exceed thirty acres, for the extension of such cemetery, if the same be deemed necessary, and may raise the means by sale of lots or otherwise, but in no event by taxation,

(10) Act of May 23, 1887, P. L., 168.

to pay for the same, and perform such other duties as may be deemed necessary in the premises; they may lay out the grounds so purchased, and change or alter the original plot of such cemetery, and may dispose of such grounds in the same manner and for the same purposes as such incorporated company did or could have done; and a deed made by the burgess of such borough shall be of the same validity as the deed of such incorporated company; and the said burgess of any such borough is hereby authorized to make deeds to those who heretofore purchased lots for burial, but have not as yet been furnished with deeds by said cemetery corporations; in changing or altering the plot of any such cemetery, the dead bodies may be removed and re-interred in a suitable place without cost to surviving friends.¹¹

1175. Private Sales of Real Estate to Cemetery Companies.

Wherever the several courts of this Commonwealth are authorized by existing laws to decree the sale and conveyance of real estate, and it appears to the court of the proper county, on application, that such real estate is held by trustees of religious societies, congregations or church organization which are desirous of selling and conveying a portion of said real estate to an association or corporation, for the exclusive purpose of a cemetery or place of sepulchre for the dead, it shall be lawful for said court to order and decree a private sale of said real estate, at such price and upon such terms and conditions as shall be agreed upon by said parties, notice of said application to be given to all parties interested as the court shall direct; the sale to be approved by the court and the deed acknowledged as required by existing laws.¹²

1176. Exemption From Taxation.

All burial grounds not held or used for private or corporate profit are exempted from all county, city, borough, bounty, road, poor and school tax by the Act of May 14, 1874, P. L., 158, and lots in burying grounds are exempted from all taxation by the Act of April 5, 1859, P. L., 363.

(11) Sec. 3, of Act of May 13, 1876, P. L., 159, amending the Act of May 19, 1874, P. L., 208.

(12) Act of March 24, 1877, P. L., 39.

CHAPTER XLVII.

CHARITABLE CORPORATIONS.

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| 1177. Incorporation Authorized. | Want of Trustees, or Because of Certain Other Defects. |
| 1178. Purchase of Real Estate. | |
| 1179. Corporations for Charitable Uses May Vest Property in Trustees. | 1182. Disposition of Assets of Charitable Corporations. |
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| 1181. Disposition of Property for Charitable Uses not to Fail for | 1184. Acceptance of the Constitution by Charitable Corporations. |

1177. Incorporation Authorized.

Corporations may be formed under the provisions of this act for II. The support of any charitable undertaking.¹ XIV. For receiving and holding property, real and personal, of and for unincorporated religious, beneficial, charitable, educational and missionary societies and associations, and executing trusts thereof.²

1178. Purchase of Real Estate.¹

1179. Corporations for Charitable Uses May Vest Property in Trustees.

Any corporation or trustees for charitable uses owning any property dedicated to religious or charitable purposes, such as churches, school houses, parsonages, hospitals, almshouses and the

(1) Secs. 1 and 2, Act April 29, 1874, P. L., 73.

(2) Act of July 15, 1897, P. L., 283. In an application for a charter of a corporation to receive and hold property in trust for unincorporated charitable associations, etc., the several unincorporated associations for which the proposed corporation is intended to hold property in trust should be described with the same particularity as though the application were being made for a charter for such association. *Susquehanna Title & Trust Co.*, 13 D. R., 69 (1903).

(3) See Secs. 431, 432, 433, 437, 438, 439, 440, Chapter on Real Estate.

like, may, for the purpose of protecting the said property from liability to debt thereafter contracted on the part of the corporation or persons having the control or management of the charity, vest their property in trustees upon trust for the use of the congregation or members of the corporation for the time being as places of worship, or for use as school houses or residence for the minister or pastor of the congregation, or for the maintenance of any charity, and when the trustees shall be so vested by deeds duly recorded, the property thus conveyed, so long as it is used for the purposes above mentioned and is not used for any secular purpose or for a purpose from which profits are derived, shall not be liable to any debts, contracts or engagements of the corporation or congregation thereafter made or entered into, but shall be deemed and taken to be freed therefrom in the same manner and with like effects as if the same had been conveyed or devised to the trustees by a stranger in trust for the uses of the congregation or corporation, but so that the same shall not be liable to their debts, contracts or engagements nor to their control for any purpose other than for the uses of the same as places of worship, or as free schools or schools from which no pecuniary profits are derived, or as a residence for the minister or pastor of the congregation, or for the maintenance of the charitable purpose for which it was dedicated or intended by the donors or contributors.⁴

1180. Trustees and Officers to Notify Contractors That Property Is Not Liable for Debts Contracted in Building.

All trustees and officers of corporations having the management of property for charitable uses which is held in trust under the provisions of section one, contracting debts or causing them to be contracted in the improvement of the property by building thereon shall be personally liable for the debts thus contracted unless they shall have notified the persons with whom the contract is made that the property is not liable for the debts contracted in building thereon, but there shall be no liability to anyone but to the person with whom a contract is made by the trustees or corporation.⁵

(4) Sec. 1, Act of April 10, 1893, P. L., 14.

(5) Sec. 2, Act of April 10, 1893, P. L., 14.

1181. Disposition of Property for Charitable Purposes Not to Fail for Want of Trustees or Because of Certain Other Defects.

No disposition of property heretofore or hereafter made for any religious, charitable, literary or scientific use, shall fail for want of a trustee, or by reason of the objects being indefinite, uncertain or ceasing, or depending upon the discretion of a last trustee, or being given in perpetuity or in excess of the annual value hereinbefore limited, but it shall be the duty of any orphans' court, or court having equity jurisdiction in the proper county, to supply a trustee, and by its decrees to carry into effect the intent of the donor or testator, so far as the same can be ascertained and carried into effect consistently with law or equity; for which purpose the proceedings shall be instituted by leave of the Attorney General of the Commonwealth, on the relation of any institution, association, corporation not for profit or individual, desirous of carrying such disposition into effect, and willing to become responsible for the costs thereof, subject to an appeal as in other cases in said courts respectively, and to be reviewed, reversed, affirmed or modified by the Supreme Court of this State; but if the objects of the trust be not ascertainable, or have ceased to exist, or such disposition be in excess of the annual value permitted by law, or in perpetuity, such disposition, so far as exceeding the power of the courts to determine the same by the rules of law or equity, shall be taken to have been made subject to be further regulated and disposed of by the Legislature of this Commonwealth, in manner as nearly in conformity with the intent of the donor or testator and the rules of law against perpetuities as practicable, or otherwise to accrue to the public treasury for the public use: *Provided*, That this act as amended shall not apply to any case which has been adjudicated prior to the adoption of this amendment.⁶

1182. Disposition of the Assets of Charitable Corporations.

The assets of a corporation organized for charitable purposes are held in trust for the public and cannot, like the assets of a private corporation, be distributed, upon its dissolution among the members thereof,⁷ and the wishes and recommendations of the contributors as to the disposition of the assets on the dissolution of

(6) Act of May 23, 1895, P. L., 114, amending Sec. 10, Act April 26, 1855, P. L., 328. See Act of May 9, 1889, P. L., 173.

(7) *Humane Fire Company's Appeal*, 88 Pa., 389 (1879); *Com. v. Pauline Home*, 141 Pa., 537 (1891).

the corporation are not absolutely controlling upon the decree that the court may make.⁸

1183. Certain Charitable Corporations May Be Divided into Two or More Similar Corporations.

Whenever any charitable corporation, having more than one hospital building or other place where its operations are carried on, shall desire a division of its corporate entity and property, so that thereafter the charity shall be administered by two or more separate corporations, it shall be lawful for such charitable corporation to present its petition to any Court of Common Pleas of the county in which the principal office of such corporation is situate, praying for such division; and thereupon such court shall appoint a day for hearing said petition, of which hearing notice shall be given by advertisement, once a week for three successive weeks, in two newspapers of general circulation printed in such county.⁹

Upon said hearing, it shall be lawful for said court to decree the division of said corporation and of its property and franchises into two or more parts, and that the petitioning corporation shall thereafter consist of two or more corporations, as many as there shall be parts. One of said parts of its property shall be awarded to one of the new corporations, which shall continue under the title of the petitioning corporation, and the other part or parts of said property to the new corporation or corporations, to which said court shall give such title or titles as the petitioning corporation may elect. The court shall fix the number of the directors or trustees of said new corporations, and shall appoint such persons, citizens of Pennsylvania, as the petitioning corporation may nominate, to serve as directors or trustees until the next annual meeting of said corporations. The said new corporation shall be governed by the provisions of the charter of the petitioning corporation, unless the petitioning corporation shall pray for different provisions for the government of the new corporations, in which case it shall be lawful for the court to decree that such new charter provisions shall govern said new corporation; provided, such provisions be lawful and not injurious to the community; and provided also, that

(8) *Com. v. Pauline Home*, 141 Pa., 537 (1891).

(9) Sec. 1, Act May 1, 1907, P. L., 140.

no vested rights of contributors or other parties shall be impaired.¹⁰

All moneys, securities, and endowments of the petitioning corporation shall be equitably divided amongst the new corporations: *Provided always*, That no gift or legacy shall be diverted from the purpose of the donor.¹¹

When the reception of any person or persons, or class of the community, or other specific public duty, is enjoined upon said petitioning corporation by any act or acts of Assembly, it shall be lawful for said court by its decree to direct which of said new corporations shall thereafter receive such person or persons, or class of the community, or perform such other public duty; and thereafter it shall be the duty of the new corporation, so charged, to do and perform the duty as aforesaid, and the other new corporation or corporations shall be released and discharged therefrom.¹²

It shall be lawful for the court to decree such conveyances, assignments, and transfers of the property and effects of the petitioning corporation as it may deem proper to be made to the new corporation or corporations, and such conveyances, assignments, and transfers shall thereupon be made; and thereupon each of the corporations, so created, shall hold the property as decreed and conveyed to it as its own property, as fully and completely as said petitioning corporation held the same.¹³

1184. Acceptance of the Constitution by Charitable Corporations.

No general or special law shall be passed, conferring a benefit upon any corporation, unless such corporation shall have previously filed in the office of the Auditor General the acceptance of the provisions of the Constitution.¹⁴

Such acceptance may be made by resolution adopted at a regular or called meeting of the directors or trustees or other proper officers of any such corporation, which shall be certified under the seal of the corporation and filed in the office of the Auditor General.¹⁵

(10) Sec. 2, Act May 1, 1907, P. L., 140.

(11) Sec. 3, Act May 1, 1907, P. L., 140.

(12) Sec. 4, Act May 1, 1907, P. L., 140.

(13) Sec. 5, Act May 1, 1907, P. L., 140.

(14) Sec. 1, Act May 22, 1878, P. L., 84.

(15) Sec. 2, Act May 22, 1878, P. L., 84.

The Auditor General shall cause a copy of such resolution to be recorded in a book to be kept for such purpose and a transcript of the same under the seal of the office shall be evidence for all purposes.¹⁶

The foregoing act relates to charitable corporations only, having no stockholders vested with property rights.¹⁷

(16) Sec. 3, Act May 22, 1878, P. L., 84.

(17) Baker's Appeal, 109 Pa., 461 (1885).

CHAPTER XLVIII.

CO-OPERATIVE ASSOCIATIONS.*

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1185. How Formed—Powers.

Co-operative associations, productive and distributive, may be incorporated under this act, upon compliance with its requirements, by any five or more farmers, mechanics, laborers, or other persons, who shall have associated themselves together by written articles of association, such as are hereinafter described, for the purpose of carrying on any agricultural, horticultural, mining, quarrying, building, mechanical, manufacturing or commercial, or for the purpose of manufacturing, cultivating, raising, trading or dealing in all kinds of goods, wares, merchandise, chattels, grain, vegetables, roots, fruits and other produce, or animals for

*For Co-operative Banking Associations, see Secs. 980-996.

sale, food or other purposes, or for the purpose of buying, selling, holding, leasing or improving lands, tenements or buildings; and that such persons, so associating, may adopt any corporate name, indicating their co-operative character and which has not been previously adopted by any other corporation, formed under this act: *Provided*, That the two last words of such name shall be "co-operative association," and that it shall not be lawful to use in such name, either the words "society" or "company," and that any violation of this proviso by any corporation, formed under this act, shall render each member thereof personally liable for all its debts.¹

The omission from the articles of a co-operative association filed in the office of the recorder of deeds of the proper county, through an error in the office of the Secretary of the Commonwealth, in the statement of the term of the existence of the association, as required by Sec. 2 of the Act of June 7, 1887, will not make the members individually liable for its debts; nor will the failure to publish, on the letter-heads of the association, the notice in regard to credit required by the eighth section of the act make the members so liable, nor the fact that the association sells on credit or, in good faith, confesses judgment to one of its members for an honest debt.²

1186. Filing of Articles of Association.

Before any association formed under this act shall commence its business, its articles of association shall be filed and recorded in the office of the Secretary of State of this State, and two copies of said articles shall be made, which the said Secretary of State shall certify by his official signature and the seal of this State as being correct copies of said articles so filed and recorded, one of said certified copies shall be filed and recorded in the office of the recorder of deeds of the county in which the principal office of the association shall be located, and the said recorder of deeds shall certify by his official signature and the seal of his office that the said certified copy of said articles has been filed and recorded in his office, and the other certified copy of said articles shall be held by the asso-

(1) Sec. 1, Act June 7, 1887, P. L., 365.

(2) *Bendall Rankin & Co. v. Jackson et al.*, 11 Pa. C. C., 183 (1892); 1 D. R., 726.

ciation named therein; and the said articles or copies thereof duly certified by either of the aforesaid officers may be used as evidence in all courts and places of the incorporation of as well as for or against such association; and the said Secretary of State and the said recorder of deeds shall each be paid for said filing, recording and certifying, at the rate of ten cents for each one hundred words contained in said articles; and after such articles of association shall have been made, filed and recorded, as herein required, the persons signing the same, and such other persons, partnership or corporations, who shall, from time to time, own and possess any share or shares in the stock capital of such association, and their several successors and assigns, shall be deemed and taken to be a body corporate and politic, by the name and for the purposes mentioned in such articles of association.³

1187. What Articles of Association to Set Forth.

The articles of association shall be signed by the persons originally associating themselves together, and shall be acknowledged by at least five of them, before a notary public, and shall state distinctly:

First. The name by which such association shall be known.

Second. The place in this State where its principal office is to be located.

Third. The purpose or object for which it is formed.

Fourth. Whether its stock capital is fixed, and if so, what amount, or whether such capital is to be of an amount varying, from time to time, as the business may require.

Fifth. The amount of each share of permanent stock and ordinary stock of such capital, and how such shares may be paid for.

Sixth. The amount of capital that will be actually paid in before commencing business.

Seventh. The terms on which persons may become members.

Eighth. On what days in January, April, July and October regular or quarterly meetings of the members are to be held.

Ninth. Such other matters, not repugnant to this act, as may be deemed proper and necessary.

Tenth. The term of its existence, not to exceed thirty years, and

(3) Sec. 2, Act June 7, 1887, P. L., 365.

Eleventh. The names of the first associates, their respective residences and the number and class of shares held by each of them.⁴

1188. Stock Capital.

The stock capital of any such association shall consist of the amounts standing to the credit of members on account of the shares allotted to them, certificates for which shall be issued, from time to time, as such shares may have become fully paid up; and there may be two classes of shares, one of which classes shall be styled and known as "permanent stock," which shall not be withdrawable but may be transferred subject to the by-laws of such association, and each member thereof shall take and hold at least one share of said permanent stock; and the other class of shares may be styled and known as "ordinary stock," which may be repaid, transferred or withdrawn, in accordance with the by-laws of such association; and the shares of either class may be of amounts not less than five nor more than twenty-five dollars each, and may be paid for in one sum, or by periodical installments or by occasional subscriptions, or by the interest thereon, or by profit dividends.⁵

1189. Statement of Invested Stock Capital to Be Posted.

It shall be the duty of any such association to exhibit in some conspicuous place in its principal office, not later than three o'clock, post meridian, on the first business day of every month, and to continue the same in such place until the next exhibit shall be thus made, a statement showing correctly and distinctly the amount of such invested stock capital, and what proportion such stock capital bears to such loans or deposits, such statement to be made up to the close of the next preceding month, and to be signed by the president and treasurer, or by any two of the directors, and to be attested by the secretary and auditors of such association, and if any of such officers as aforesaid, shall wilfully make or knowingly consent to any false statement in such exhibit, he shall, by so doing, be deemed to have committed a misdemeanor, and shall, upon conviction thereof, be punished as provided in section thirteen of this act: *Provided*, Any member or

(4) Sec. 3, Act June 7, 1887, P. L., 365.

(5) Sec. 4, Act June 7, 1887, P. L., 365.

other person having an interest in the funds of such association, or any person legally authorized to assess property for taxes, may inspect its books and accounts during the official business hours, but no such member, person or assessor, unless he be an officer of such association, or be specially authorized by a resolution thereof, shall have the right to inspect the share or other account of any other member or person, without his written consent.⁶

1190. Amount of Stock Capital—Members Not to Cast More Than One Vote Each.

The amount of stock capital of such association to be taken, held or claimed at any one time by any person or persons, jointly or by partnerships, or by corporations, shall not exceed one thousand dollars, except consent therefor be voted by the members, at any regular quarterly meeting thereof, nor shall any member upon any subject at any meeting, be entitled to more than one vote, which shall be given in person and not by proxy, and any stock capital held by persons jointly or by partnerships, or by corporations, shall be voted upon as if held by one person only respectively, and subject to the by-laws of such association.⁷

1191. Minors May Hold Shares.

It shall be lawful if the by-laws so provide, for any minor to take and hold shares in or to make loans or deposits of money to or with any such association, and for such association to pay to any minor any moneys that may be due to him in respect of any such shares, loans or deposits standing in his name, and his receipt therefor shall be in all respects valid in law, but such minor shall not be eligible to hold any office in such association, though he may, subject to its by-laws, vote at any meeting of its members.⁸

1192. Business to Be Transacted on Cash Basis.

Any such association may buy from, sell to and trade or deal with any of its members, or other persons, partnerships or corporations, but all transactions shall be for cash, and no credit

(6) Sec. 5, Act June 7, 1887, P. L., 365.

(7) Sec. 6, Act June 7, 1887, P. L., 365.

(8) Sec. 7, Act June 7, 1887, P. L., 365.

shall either be given or taken, except that said association may contract for and pay the wages and salaries of its employes once in each week in cash, and except that such association may sell real estate, improved or otherwise, on such terms that at least one-fourth of the agreed price shall be paid in cash, at the time of sale, and that not more than three-fourths of the agreed price, together with interest on the amount of principal, interest and charges owing, from time to time, at a rate not exceeding six per centum per annum, may be secured by bond and mortgage, or by promissory notes and mortgages, and be made payable by fixed and equal periodical installments: *Provided however*, That such association may take or grant leases of real estate for such terms as may be agreed upon, but no such lease for any time exceeding one year, or creating a credit or liability for any sum exceeding three hundred dollars, shall be lawful or valid until the same shall be approved by a vote of the members at any regular quarterly meeting thereof: *And provided further*, That any credit given to any such association in violation of the provisions of this act shall cause a forfeiture of any credit thus illegally given, and that a notice to such effect shall be published, by such association, on its letter and bill heads, advertisements and other publications.⁹

1193. Liability of Members.

The members shall be severally and jointly liable for all debts for labor or other services of any kind performed for such association, and for any other debts lawfully incurred under the provisions of this act each of the members shall be liable to the amount of his unpaid stock capital and no more, but no suit shall be brought or any execution issued against any member individually until a judgment be first obtained for such labor, services or any other lawful debts against such association and execution be returned unsatisfied in whole or in part; and in case any member shall be compelled to pay any such judgment, or any part thereof beyond his pro rata liability therefor he shall have the right to call upon the members to pay their pro rata share of the same, and up to their pro rata liability therefor, and may sue them jointly or severally, or any number of them, and recover in such action the

(9) Sec. 8, Act June 7, 1887, P. L., 365.

ratable amount due from the member or members so sued: *And it is hereby provided*, That stock capital to the extent of twenty-five dollars belonging to any member in such association, who is a householder and has a family, shall not be subject to attachment or execution, or liable in garnishment for his individual debts.¹⁰

1194. Corporate Powers.

Any such association may carry on its business, or any part thereof, at any one or more places within this State; and may take, hold, lease and convey such personal and mixed estate as may be necessary for the purposes of its organization; and may sue and be sued in its corporate name, and may submit any matter in dispute to arbitration; and shall have a common seal, which shall not be altered or imitated, and shall bear the corporate name of, together with such device or motto as may be adopted by such association, and such seal shall be impressed upon the articles of association; and any such association may, for all and every and any of the purposes of its organization, and for every and any other purpose incidental thereto, or in this act mentioned or referred to, lay out and use its capital or other moneys and property for the time being, or any part thereof, with power to do, authorize and exercise all acts and powers whatsoever in the opinion of the directors of such association requisite or expedient to be done or exercised in relation thereto.¹¹

1195. Investment of Stock Capital in Other Associations.

Any such association may, by a majority vote of its members at any meeting specially convened therefor, authorize the directors thereof, to invest, in the name of such association, such an amount of its stock capital or reserve fund, and on such terms as such meetings shall determine, in the stock capital in any other duly incorporated co-operative associations in this State, or in any other State or country, and any such association may by a like vote permit an investment in its stock capital by any other co-operative association duly incorporated in this State, or in any other State or country: *Provided*, That the original laws of such associations permit or authorize such investments.¹²

(10) Sec. 9, Act June 7, 1887, P. L., 365.

(11) Sec. 10, Act June 7, 1887, P. L., 365.

(12) Sec. 11, Act June 7, 1887, P. L., 365.

1196. First Meetings and Elections—By-Laws—Terms of Officers.

The first meeting of any such association may be called by a notice signed by any two of the associates, who signed its articles of association, setting forth the time, place and objects of such meeting; such notice to be mailed to the address of each associate at least four clear days prior to such meeting, and a majority of such associates at such meeting shall be competent to make all such by-laws as they may deem necessary for the proper management of the business, property and affairs of such association, so that such by-laws are not repugnant to or inconsistent with the provisions of this act, or of any law of this State and of the United States, to elect the first president and secretary, both of whom shall be directors ex-officio, treasurer and either six, eight or ten directors and two auditors, all of whom shall be members of such association, and hold their offices until their successors shall have been elected in accordance with section fifteen of this act, and to transact any other business necessary for the organization of such association and appropriate to such meeting; and the secretary of such meeting shall make full and correct minutes of its proceedings upon the books of such association and the same, being signed by its chairman, shall be deemed and taken to be *prima facie* evidence of the action of such meeting.¹³

1197. Transaction of Business at Meetings—Accounts to Be Submitted.

Every such association shall hold regular quarterly meetings of its members in the months of January, April, July and October, at such place as the directors shall determine and publish, for the purpose of considering and determining upon any matter, not requiring special notice, relating to the business of such association, and at each quarterly meeting the directors shall present a full and complete report, signed by the president, of such association's transactions during the last preceding quarter, accompanied by such information and suggestions with relation to the affairs of such association and to the future management thereof as may be for the best interests of the association; and they shall also present, at each quarterly meeting, an account of all cash receipts and payments and of the losses and gains of such associa-

(13) Sec. 12, Act June 7, 1887, P. L., 365.

tion for the last preceding quarter, and also a general statement or balance sheet of such association's funds and effects, liabilities and assets as at the close of the last business day of said quarter, and such account and general statement shall be signed by the president and treasurer, and be attested by the secretary and auditors of such association; and a copy of such report, account and general statement shall be kept posted up, for three months at least, in a conspicuous place in the principal office and other places of business of such association; and any director, president, treasurer, secretary, auditor, or other officer, who shall include or knowingly consent to any false statement in such report, account or general statement, or in any other statement required to be made by this act, or by any vote of the members at any meeting thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in the State prison for not more than one year, or by both such fine and imprisonment, in the discretion of the court.¹⁴

1198. Elections of Officers After First Election.

After the first election of the directors, officers and auditors, as provided in section twelve of this act, the president, secretary and treasurer and one-half of the directors and auditors shall be elected at the quarterly meeting in January and the other half of the directors and auditors shall be elected at the quarterly meeting in July, and shall hold the several offices for one year, or until their successors are elected, and the directors shall decide by lot or otherwise, as they may deem best, who shall constitute the first half of the directors and auditors to retire at the first election that may be made at a quarterly meeting as aforesaid. The by-laws of such association shall provide how nominations shall be made and votes be taken for president, secretary, treasurer, directors and auditors, and also their eligibility and qualifications for their several duties, responsibilities and remuneration, and for their removal from office for good and sufficient cause: *Provided*, That each of the official acts of the board of directors shall be by a majority vote of all the directors elect, and shall be recorded with the yeas and nays thereon, in the minute book of such association.¹⁵

(14) Sec. 13, Act June 7, 1887, P. L., 365.

(15) Sec. 14, Act June 7, 1887, P. L., 365.

1199. Profits to Be Ascertained and Declared Quarterly—Application of Profits.

The profits shall be ascertained and declared on all business carried on in each department or branch, or by, or for, or on account of any such association for each quarter year ending with the months of March, June, September and December, and the profits realized shall be applied, as follows:

First. In reduction of the value of the fixed stock and plant of such association at the annual rate of ten per centum, or more, on fixtures, machinery, tools, et cetera, and of two and one-half per centum, or more, on warehouses, stores or other buildings, as the directors shall determine and order.

Second. In the reduction of the preliminary expenses, if any, incurred in the formation of such association and remaining unwritten off in its books at such rate, being not less than five per centum per annum, as the directors shall determine and order.

Third. In the providing for or payment of interest at the annual rate of six per centum, on permanent stock and five per centum on ordinary stock and the reserve fund: *Provided, however,* That such interest shall be credited to each member, but shall not be paid until his stock is fully paid up.

Fourth. In forming, by applying such sum or percentage of the net and remaining profits after providing for the preceding charges as the directors shall determine and order, a reserve fund, to which also all fines and forfeitures shall be carried, applicable as follows: first, to the equalization of dividend; second, to meet any other contingency affecting the business of such association; and third, to any other purpose as may be voted by the members. on the recommendation of the directors.

Fifth. In forming and maintaining a propaganda and social fund, to which shall be credited such sum, being not less than two and one-half per centum of the net profits, as the directors shall determine and order.

Sixth. And the remainder of the net profits shall be divided as follows: On the wages and salaries of the employes the same rate, and on the purchase by non-members one-half of the rate that may be allotted on the purchases by members, such wages or salaries to be the amount earned, and such purchases to be the amount actually paid for in cash during the period to which such division relates: *Provided,* That no profit dividends shall be allowed on the purchases of such articles as the directors may have

given previous notice of their intention to exclude from participation in profits: *And provided further*, That all such profit dividends shall be credited to such members, non-members, and employes, respectively, to accumulate and be applied in or toward the payment of shares of permanent stock or ordinary stock, as the directors may from time to time determine and order the issue of paid-up certificates therefor until the amount of stock capital held by such members individually reaches the limit allowed by this act; after which the profits dividends may be paid to such members as shall be provided for in the by-laws of such association.¹⁶

1200. Business Offices to Be Established—Service of Process.

Every such association shall have a regular business office to which all communications and notices shall be addressed; and service of any legal process on any such association shall be made by leaving at such office a true copy of such process with any director, officer, clerk or agent of such association; and in case such office shall be kept closed against such service, then service of such process may be made on such association by giving a true copy thereof to any of its directors or officers if found in the county wherein such office is located; and if on the return of such process, it appears that such office is kept closed or that such directors or officers could not be found within the said county, then such process may be served upon such association by serving a true copy thereof on any of its directors or officers wherever found in this State; and failing in that and on a return made to such effect, the court may order such publication, as it may deem requisite to be made in the premises, for at least one month in at least one newspaper published at or as near as may be to the place where the principal office of such association is located and proof of such publication shall be held to be due service on such association.¹⁷

1201. Employes to Give Bond.

Every person appointed to any position in any association requiring the receipt, payment, management or use of money, belonging to such association, shall, before entering upon the discharge of his duties, become bound, with two or more good and

(16) Sec. 15, Act June 7, 1887, P. L., 365.

(17) Sec. 16, Act June 7, 1887, P. L., 365.

sufficient sureties, in such sum and form as the directors shall require and approve; and the directors may also require from any other employes of such association bonds, with good and sufficient sureties, for the faithful discharge of their duties.¹⁸

1202. Fines for Breach of By-Laws, Etc.

Any such association may charge any of its members, employes or other persons doing business with it, by way of fine, for any breach or non-observance of its by-laws, or any of its business rules and regulations, such reasonable sum, not more than five dollars for each offense, as the directors may determine and order, and all such fines shall be due and payable forthwith, and if not paid, the same may be deducted from any moneys due, credited or accruing to the parties so offending.¹⁹

1203. Embezzlement by Officers and Employes.

If any director, officer, clerk, agent, or other person in the employment of any such association, shall embezzle or fraudulently dispose or convert to his own use, or shall take or secrete, with intent to embezzle and convert to his own use, any money or other property of such association, or of any of its dealers or customers, which shall have come into his possession, or shall be under his charge by virtue of such office or employment, or otherwise, he shall be deemed by so doing, to have committed the crime of embezzlement, and shall, upon conviction thereof, be punished as the law directs.²⁰

1204. Amendment of Articles of Association and By-Laws.

Any such association may alter or amend its articles of association and may alter or amend any by-law, or make any additional by-law, with the consent of a majority of its members present at a special meeting convened for such purpose, but the notice calling such meeting shall set forth clearly and fully the proposed alteration, amendment, rescission or addition; and any alteration or amendment of the articles of association shall be filed, recorded and certified in the same manner as the original articles of association.²¹

(18) Sec. 17, Act June 7, 1887, P. L., 365.

(19) Sec. 18, Act June 7, 1887, P. L., 365.

(20) Sec. 19, Act June 7, 1887, P. L., 365.

(21) Sec. 20, Act June 7, 1887, P. L., 365.

1205. Articles of Association and By-Laws to Be Recorded and Open for Inspection.

The articles of association and by-laws, and any amendments thereto or alteration therein, respectively, of any such association shall be recorded in a book to be kept for that purpose, and such book shall be open during business hours at the principal office of such association for the inspection of its members and other persons having an interest in its funds, and such articles of association, by-laws and amendments thereto and alterations therein, respectively, so recorded, shall be binding on such associations, its directors, officers, members and employes, and on all other persons having an interest in the funds of or dealing with such association, and all persons claiming on account of any or either of them, or under such articles of association, by-laws or amendments thereto or alterations therein, respectively, to the same extent as if each and every such person had subscribed his name and affixed his seal thereto, and there were in such articles of association, by-laws, and amendments thereto, or alterations therein, respectively, contained a covenant on the part of himself, his heirs, executors, administrators and assigns to conform to such articles of association, by-laws and amendments thereto or alterations therein, respectively, subject to the provisions of this act, all of whom shall be deemed and taken to have full notice thereof by such record as aforesaid, and the entry of such articles of association, by-laws, and amendments thereto, or alterations therein, respectively, in the books of such association or a true copy of the same, examined with the original, and proved to be a true copy, shall be received as evidence in all courts and places.²²

1206. Acceptance of This Act by Associations Not Formed Under It.

Any co-operative association now in existence in this State, whether incorporated or unincorporated, shall be entitled to all the benefits of this act by complying with its provisions, and may, by a vote of the majority of the members of such co-operative association to be taken according to its existing articles of association or by-laws, determine to avail itself of the provisions of this act and to take and assume corporate name and powers thereunder, and may, by a like vote, transfer to such association, so form-

(22) Sec. 21, Act June 7, 1887, P. L., 365.

ed under this act, all its property, real, personal and mixed, and thereupon such association, to which said property is so transferred, shall take the same in the same manner to the same extent and with the like effect as the same was previously owned and held by the association so transferring the same, and may, in its corporate name, sue for and collect all dues and demands, subscriptions and other benefits belonging to such original incorporated or unincorporated association: *Provided however*, That such association so taking such property as aforesaid shall take the same subject to all liens and trusts, both legal and equitable, to which the same was subject before such transfer and shall also be liable for all debts and obligations of such previous association and shall pay the same to the full extent of the value of such property at the time of so taking the same.²³

1207. Dissolution Proceedings.

Any such association desiring for any reason to be dissolved prior to the expiration of the term of years specified in its articles of association may, by a resolution passed at a special meeting therefor, by a majority vote of all the members of such association, authorize its directors, or a special committee of members, to prepare or have prepared a full and true exhibit of the affairs, property and condition of such association including an itemized statement of all its assets and liabilities, and also to report whether in the opinion of such directors or committee, it would be best to continue or close up any or all of the business of such association, and, in the latter case, to recommend such methods and means as in their judgment would be best adapted for closing up such business; such exhibit, report and recommendation to be printed and a copy thereof to be mailed, postage prepaid, to the last recorded address of every member of such association, together with a notice from the president of such directors or chairman of such a committee, as the case may be, convening a special meeting of the members to be held at such time, being not less than ten nor more than fifteen days from the date of mailing such notice, as such directors or committee shall determine and order for the purpose of considering and acting on such exhibit, report and recommendation, as to such special meetings shall seem best: *Provided*, That all votes taken on such recommendation at such

(23) Sec. 22, Act June 7, 1887, P. L., 365.

special meeting shall be by ballot and that it shall require three-fourths of all the ballots cast to carry any motion for the winding up and dissolution of such association: *Provided also*, That such president or chairman as aforesaid shall mail to every member of such association, along with the notice for the last mentioned special meeting, a printed form of ballot for the use of such members as may be unable to attend at such special meeting, on which shall be printed two questions as near as may be in the following words: Are you in favor of the winding up and dissolution of the association? Answer yes or no. Are you in favor of the plan as recommended for those purposes? Answer yes or no. And such answers shall be signed by the members so answering, and such ballots may be addressed and mailed, postage prepaid, or be personally delivered to such president or chairman as aforesaid at the principal office of such association; and all such ballots so received prior to or at the time appointed for such special meeting shall be opened and counted by the scrutineers or tellers appointed by such special meeting along with the ballots cast on the same or like questions by the members present at such special meeting: *And provided further*, That in the event of a resolution being passed, as aforesaid, by such special meeting for the winding up and dissolution of such association, a copy of such resolution, duly certified by the official signatures of the president and secretary and sealed with the common seal of such association, shall be given to, and shall contain full instructions and authority for the parties to be named therein to assume and discharge the duties entrusted to them by such resolution; and upon the completion of such duties by said parties, they shall make a certificate, signed and sworn to by them before a notary public, upon such certified copy of the aforesaid resolution, that they have truly and faithfully discharged all the duties entrusted to them thereby, and that they have realized all the assets and settled all the liabilities of such association in accordance with the instructions and authority given to them by such resolution; and such certificate and certified copy of such resolution shall be filed by such parties in the offices of the Secretary of State of this State and of the recorder of deeds of the county wherein the principal office of such association was located and such certificate and certified copy of resolutions shall be recorded by the said Secretary and the recorder of deeds in like manner as the articles of association of such association were recorded.²⁴

(24) Sec. 23, Act June 7, 1887, P. L., 365.

CHAPTER XLIX.

DRAINAGE AND MEADOW COMPANIES.

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| 1208. Incorporation Authorized. | 1215. Owners and Supervisors of |
| 1209. Drainage Companies Formed Under the Provisions of the Act of April 5, 1870, P. L., 47. | Townships Made a Corporation. |
| 1210. Petition for Appointment of Commissioners. | 1216. Granting of Charter. |
| 1211. Commissioners to Estimate Damages. | 1217. Collection of Assessments. |
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| 1213. What Portion of Expense to be Borne by Townships. | 1219. Consolidation of Drainage or Meadow Companies. |
| 1214. Appeal from Assessment of the Commissioners. | 1220. Consolidation When Lands of a Company Lie in More Than one County. |
| | 1221. Consolidated Company to Take Name of the Original Company Controlling Most Territory. |

1208. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XVI. . . . maintaining or erecting walls or banks for the protection of low lying lands¹

1209. Drainage Companies Formed Under the Provisions of the Act of 1870 (P. L., 47).

Any swampy or wet lands, belonging to several owners jointly, may be drained at the common expense, under the following regulations.²

1210. Petition for Appointment of Commissioners.

Upon the petition of a majority of said owners of such wet or swampy lands, forming a continuous swamp or marsh, the Court of Quarter Sessions of the county, or if lying within two coun-

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Sec. 1, Act of April 17, 1876, P. L., 30, amending Par. XVI., Class 2, Sec. 2, Act of April 29, (1874).

(2) Sec. 1, Act April 5, 1870, P. L., 47.

ties, the nearest court, shall appoint three disinterested persons, who shall be commissioners with power to view the wet lands described; and if in their judgment to drain them shall be practicable, they shall proceed to lay out a drain, measuring the length and ascertaining the depth, as near as may be with ordinary facilities; they shall also have power, and it shall be their duty, to make a survey of such swampy or wet land, to get its contents and quantity owned by each land holder, and make an estimate of the cost of constructing said drain.³

1211. Commissioners to Estimate Damages.

Said commissioners shall also estimate the damages sustained by any such land-holders, or any other person, by the construction of such drain; also the proportion of the cost of construction to be borne by each land-owner owning the land.⁴

1212. Method of Making Assessments.

In assessing the amount to be borne by each land-holder of the cost of opening such drain, the estimate shall be made with reference to, and based upon both the amount of land made useless by such swamp and the benefits which will result from such improvement, and in no case to exceed the estimated benefits.⁵

1213. When Portion of the Expense to Be Borne by Townships.

If in the judgment of the commissioners the swamp is a public nuisance, then they shall have power to say what portion of the expense shall be borne by the township or townships in which said swamp lies.⁶

1214. Appeal From Assessment of the Commissioners.

If any one of the parties shall feel aggrieved by the assessment and verdict of these commissioners, then upon his appeal and petition, the court shall appoint six disinterested commissioners to review the whole case and report, and their report, when approved by the court, shall be final.⁷

(3) Sec. 2, Act of April 5, 1870, P. L., 47.

(4) Sec. 3, Act of April 5, 1870, P. L., 47.

(5) Sec. 4, Act of April 5, 1870, P. L., 47.

(6) Sec. 5, Act of April 5, 1870, P. L., 47.

(7) Sec. 6, Act of April 5, 1870, P. L., 47.

1215. Owners and Supervisors of Townships Made a Corporation.

When their proceedings shall be gone through with, the owners of such swamp and the supervisors of the township or townships, as the case may be, shall constitute a corporation; and the time and place of its first meeting shall be fixed by the court, and a yearly meeting thereafter shall be held; and said corporation, acting through a majority, shall have power to open and repair such drain at the common expense, in proportion to the assessment made by the commissioners.⁸

1216. Granting of Charter—Name.

The Court of Quarter Sessions before which proceedings shall be had, is hereby authorized and required, when the report of the commissioners is confirmed, to make the necessary charter, giving the owners of swamp lands, which by the aforesaid act are made a body corporate, the necessary powers to carry out the intention of the act to which this is a supplement, and also to give a name to said corporation and fix the time and place for its first meeting.⁹

1217. Collection of Assessments.

The said corporation, when organized, shall have power to lay and collect assessments; which assessments shall be in the proportions indicated by the commissioners in their report; and said assessments or tax, until paid, shall be a lien upon or against the real estate and the personal property that may be upon the same belonging to the real owner of said swamp or part of said swamp lands.¹⁰

1218. Duties of Officers.

When authorized by the corporation, it shall be the duty of the president, assisted by the secretary, to make an assessment in accordance with the meaning of the act to which this is a supplement; and a duplicate, with his warrant, to the treasurer of said corporation, shall be his authority to collect said assessment as county rates and levies are collected; and said corporation shall not have the power to assess or collect for any other purposes

(8) Sec. 7, Act of April 5, 1870, P. L., 47.

(9) Sec. 1, Act of June 15, 1871, P. L., 388.

(10) Sec. 2, Act of June 15, 1871, P. L., 388.

than that authorized by this act, and the act to which this is a supplement.¹¹

1219. Consolidation of Drainage or Meadow Companies.

Where the districts of two or more meadow companies are contiguous to each other, it shall be lawful for them to consolidate their franchises and corporate rights and to become one company, by an agreement duly executed and recorded in the office for recording of deeds in each county in which the districts of said meadow companies shall extend.¹²

1220. Consolidation When Lands of a Company Lie in More Than One County.

It shall also be lawful for the Court of Common Pleas of any county in which the major part of the lands of any meadow company may lie, upon the application of the said company, to decree the consolidation of said company with any other meadow company controlling contiguous territory, whenever in the opinion of said court such consolidation would enure to the public interest; and the said decree shall be recorded in the office for recording deeds in each county into which the districts of said meadow companies shall extend.¹³

1221. Consolidated Company to Take Name of the Original Company Controlling Most Territory.

In case of consolidation of two or more meadow companies by agreement or by decree as aforesaid, the consolidated company shall be known by the name and be subject to all the provisions of the charter of that one of the original companies which controlled the larger territory prior to the consolidation.¹⁴

(11) Sec. 3, Act of June 15, 1871, P. L., 388.

(12) Sec. 1, Act May 15, 1893, P. L., 48.

(13) Sec. 2, Act May 15, 1893, P. L., 48.

(14) Sec. 3, Act of May 15, 1893, P. L., 48.

CHAPTER L.

ELECTRIC LIGHT, HEAT AND POWER COMPANIES.¹

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| 1223. Incorporation Authorized. | 1233. Method of Assessing Value of Existing Plants When a Value Cannot be Agreed Upon. |
| 1224. Statement of Purpose in Charter. | 1234. Increase of Indebtedness in Order to Provide for the Manufacture of Electricity by Boroughs. |
| 1225. Powers. | 1235. Increases of Indebtedness Heretofore Made for Such Purposes Validated. |
| 1226. Acceptance of the Act of May 8, 1889, P. L., 136. | 1236. Recovery of Damages for Injuries to Trees on Highways Inflicted by Electric Light Companies. |
| 1227. When Electric Light Companies Are and Are Not Manufacturing Corporations. | 1237. Companies May Contract with each other, for Use of Wires, Poles and Conduits. |
| 1228. Territory in Which Electric Light Companies May Operate. | |
| 1229. Electric Light Companies Have no Exclusive Privileges. | |
| 1230. Municipal Control — Licenses. | |
| 1231. Erection of Electric Light Poles and Wires on Highways. | |
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1222. History.

Prior to the passage of the Act of May 8, 1889, P. L., 136, providing for the incorporation of electric light, heat and power companies, corporations of that character were incorporated under the provisions of Par. XI, Class 2, Sec. 2, of the Act of April 29, 1874, which provided for the formation of corporations for "the manufacture and supply of gas, or the supply of light, heat and power to the public by other means," and the Act of May 1, 1876, P. L., 90, which provides, *inter alia*, for the formation of corporations "for the transaction of any business in which electricity over or through wires may be applied to any useful purpose."

It was intimated, however, in Scranton Electric Light and Heat Company's Appeal, 122 Pa., 154 (1888) that said acts did not

(1) For Electric Transmission Companies, see Sec. 1238.

authorize the incorporation of such companies, and the Act of May 8, 1889, P. L., 136, was, accordingly, passed authorizing the incorporation thereof.

Where an electric light company, incorporated under the Act of April 29, 1874, obtains consent to operate in a municipality, and subsequently becomes incorporated under the Act of May 8, 1889, it is not necessary for it to have a renewal of municipal consent.^{1*}

1223. Incorporation Authorized.

Sub-division eleven, class second, corporations for profit, in the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini, one thousand eight hundred and seventy-four, which reads as follows: "The manufacture and supply of gas, or the supply of light or heat to the public by any other means," be and the same is hereby amended to read as follows: The manufacture and supply of gas, or the supply of light, heat and power by means of electricity, or the supply of light, heat or power to the public by any other means.^{1**}

1224. Statement of Purpose in Charter.

Supplying light, heat and power, or either of them, to the public in [statement of territory; see Sec. 1228] and to such persons, partnerships and corporations residing therein or adjacent thereto as may desire the same.

1225. Powers.

Companies incorporated under the provisions of this act for the supply of light, heat and power, or any of them, to the public by electricity shall, from the date of the letters patent creating the same, have the powers and be governed, managed and controlled as follows:

Clause 1. Every such corporation shall have the authority to supply light, heat and power or any of them, by electricity, to the public in the borough, town, city or district where it may be located, and to such persons, partnerships and corporations, residing therein or adjacent thereto, as may desire the same, at such prices as may be agreed upon, and the power also, to make, erect

(1*) Allegheny County Light Co. v. Booth, 216 Pa., 564 (1907).

(1**) Sec. 1, Act May 8, 1889, P. L., 136.

and maintain the necessary buildings, machinery and apparatus for supplying such light, heat and power or any of them, and to distribute the same, with the right to enter upon any public street, lane, alley or highway for such purpose, to alter, inspect and repair its system of distribution: *Provided*, That no company which may be incorporated under the provisions of this act, shall enter upon any street in any city or borough of this Commonwealth until after the consent to such entry, of the councils of the city or borough in which such street may be located, shall have been obtained.²

The above provision confers a limited power of eminent domain, and under such power electric light companies may enter upon the bed of a turnpike road and construct its line thereon notwithstanding the objection of abutting property owners owning a fee in the bed of the road, on the filing of a bond to secure such owners from loss.^{2*}

Where an electric light company is given the right to use the streets of a municipality, it may lay conduits under the sidewalks.^{2**}

1296. Acceptance of This Act.

Any associations of persons or corporations heretofore engaged in the business of supplying light, heat and power or any of them, by electricity, under color of a charter or letters patent of this Commonwealth, issued under the provisions of the act to which this act is a supplement, upon accepting the provisions of this act by writing under seal of the company, filed in the office of the Secretary of the Commonwealth, and filing therewith its letters patent or charter, which shall be a surrender and acceptance thereof, shall thereupon be a body corporate hereunder and be entitled to and possessed of all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, and all the property, rights, easements and privileges belonging to said associations and corporations, theretofore acquired by gift, grant, conveyance, municipal ordinance or assign-

(2) Sec. 2, Act May 8, 1889, P. L., 136.

(2*) *Brown v. Radnor Township Elec. Lt. Co.*, 208 Pa., 453 (1904); *Radnor Township Elec. Lt. Co.'s Petition*, 208 Pa., 460 (1904); *Zanziger v. Wayne Elec. Lt. Co.*, 6 D. R., 577 (1897). See Sec. 1231.

(2**) *Allegheny County Lt. Co. v. Booth*, 216 Pa., 564 (1907). See, however, *Com. v. Warwick*, 185 Pa., 623 (1898).

ment, or otherwise, upon such acceptance as aforesaid, shall be and hereby are ratified, approved, confirmed and assured unto such acceptors and corporations, with like effect and to all intents and purposes, as if the same had been originally acquired by and under the authority of this act, and such company or corporation shall thereafter be governed by the provisions of this act. And the Governor shall forthwith issue to the said acceptors letters patent under this act, under the same name as the company bore which surrendered its charter or letters patent, and for the same territory, and the corporation shall receive credit for any bonus paid by the former corporation: *Provided*, That this act shall not be so construed as to permit any corporation accepting its provisions, to enter into any city or borough without assent of councils, except in so far as the councils thereof have heretofore, or shall hereafter, give their assent thereto.³

1227. When Electric Light Companies Are, and Are Not, Manufacturing Companies.

Electric light companies are not manufacturing companies within the meaning of the acts exempting such companies from taxation upon their capital stock,⁴ but they are manufacturing companies within the meaning of the Act of May 25, 1878, P. L., 145, and the purchasers of the franchises of such corporations at judicial sale may reorganize them under the provisions of that act.⁵

1228. Territory in Which Electric Light Companies May Operate.

Electric light companies may not be chartered to supply electricity to more than one municipality, and to persons, partnerships and corporations "residing adjacent thereto."⁶ How far their power to operate is extended by the permission to serve persons and corporations residing adjacent to the municipality within which they are chartered to operate has never been judicially determined. Presumably they may supply persons and corporations resident on the immediate outskirts of the municipality in which they operate, and may not operate over an entire adjoining borough, city or township, because the residents thereof live adjacent

(3) Sec. 3, Act May 8, 1889, P. L., 136.

(4) *Com. v. Northern Elec. Lt. & Pr. Co.*, 145 Pa., 105 (1891); *Com. v. Edison Elec. Lt. & Pr. Co.*, 170 Pa., 231 (1895). See Sec. 807.

(5) *Com. v. Keystone Elec. Lt., Ht. & Pr. Co.*, 193 Pa., 245 (1899).

(6) *Home Elec. Co.*, 1 D. R., 97 (1892); 11 Pa. C. C., 179. *Op. Sec. Com.*

to such municipality. Where the line is to be drawn between these extremes must be determined by the courts.

The term "district" in the various acts relative to water, gas and electric light companies is not an enlarging term, but refers to a portion of a municipality.⁷

1229. Electric Light Companies Have No Exclusive Privileges.

Electric light companies have no exclusive privileges,⁸ and the fact that a city has granted to such a company the right to supply "light, heat and power by electricity to persons, partnerships and associations in the city and territory adjacent thereto, and to erect a plant and poles and necessary fixtures therefor, and run wires on the same on, over and under all streets, alleys and lanes in said city" does not deprive the city of the right to furnish street lamps in any part of the city, either where it had been furnishing them or elsewhere. Under such a grant the company has no exclusive privilege to furnish street lamps anywhere.⁹

But under the Acts of April 3, 1851, Sec. 2, P. L., 320; May 8, 1889, P. L., 136, and May 20, 1891, P. L., 90, a borough may enter into a valid contract with an electric light company by which it gives the company an exclusive franchise to supply the borough and its inhabitants with electric light for ten years, the borough to purchase the company's plant at the end of such term, or failing to do so to renew the franchise for another ten years, and equity will prevent interference with the operation of such contract either by the borough or by another electric light company claiming a franchise from it.^{8*}

Where an electric light company which has supplied its customers under a contract system at a fixed charge per month, finds that some of its customers are using an amount of power which exceeds in cost the price which they are paying for the same, and

(7) *Bly v. White Deer Mountain Water Co.*, 197 Pa., 80 (1900); *Home Elec. Com., Op. Sec. Com.*, 1 D. R., 97 (1892); 11 Pa. C. C., 179 (1892). But see *Brown v. Radnor Township Elec. Lt. Co.*, 208 Pa., 453 (1904), in which it was held that the word "district" in Sec. 2, Act May 8, 1889, P. L., 136, is not restricted merely to a division of a city or borough, and an electric light company may be incorporated for a township.

(8) *Home Elec. Co., Op. Sec. Com.*, 11 Pa. C. C., 179 (1892).

(8*) *Muncy Elec. Lt. & Pr. Co. v. People's Elec. Lt., Ht. & Pr. Co.*, 218 Pa., 636 (1907).

(9) *Titusville Elec. Lt. & Pr. Co. v. Titusville*, 196 Pa., 3 (1900).

adopts a rule providing for a new system of meter service, but without canceling all of its original contracts, and thereafter one of its customers, at its own request, is transferred from the contract class to the meter class, such customer cannot afterwards compel the company to transfer him back to the contract class, where it appears that all persons in the meter class are treated fairly and equally.¹⁰

As between electric light companies exercising similar franchises upon the same street, priority carries superiority of right, Equity will adjust conflicting interests as far as possible, but if interference and limitation of one or the other is unavoidable, the last comer must give way, and the fact that it is under contract with the city for work of a public nature does not alter its status. On a bill by one electric light company against another, equity will enjoin not only wanton or negligent damage by the defendant, but all interference which is not strictly unavoidable, and the defendant should be enjoined to keep its wires clear of those in bona fide use by the plaintiff and necessary for its business, without regard to the increased cost of other methods.¹¹

1230. Municipal Control—Licenses.

Electric light companies may not occupy streets in townships of the first class without permission by ordinance first obtained.

Boroughs may impose a reasonable license on the poles of electric light companies.¹²

A borough may accept a bid other than the lowest for the electric lighting of the borough, if such action will be beneficial to it and tend to break up a monopoly and secure future competition, and a contract for such lighting is not invalid because the contracting company had not received its letters patent and registered the same until after the bid and acceptance of the contract.^{12*}

In the absence of a special ordinance providing for the lighting

(10) *Mercur v. Media Elec. Lt. & Pr. Co.*, 19 Pa. Super. Ct., 519 (1902).

(11) *Edison Elec. Lt. & Pr. Co. v. Merchants' & Mfrs. Elec. Lt., Ht. & Pr. Co.*, 200 Pa., 209 (1901).

(11*) For pole and wire license fees, see Secs. 763-770.

(12) *North Braddock Borough v. Central Prtg. & Telegraph Co.*, 11 Pa. Super. Ct., 24 (1899); *Kittanning Elec. Lt., Heat & Pr. Co. v. Kittanning Boro.*, 11 Pa. Super. Ct., 31 (1899); *Ridley Park Boro. v. Citizens' Elec. Lt. & Pr. Co.*, 9 Pa. Super. Ct., 615 (1899).

(12*) *Shenandoah Heat & Pr. Co. v. Shenandoah Borough*, 34 Pa. C. C., 114 (1907).

of a borough and authorizing the making of contracts from year to year, a resolution of the borough council accepting the bid of an electric light company to light the streets, must be submitted to the chief burgess for his approval.¹³

A municipality may not bargain away the right to exercise its police powers. A borough may, therefore, impose a license tax upon the poles of an electric light company supplying light to the borough under a contract not providing for such license.^{13*} And it may require the poles of such a company to be moved, where streets are widened, and re-erected on the inner side of the curbs.^{13**}

1231. Erection of Electric Light Poles and Wires on Highways.

An electric light company, under the express terms of the Act of May 8, 1889, P. L., 136, has a limited power of eminent domain, and under such power may enter upon the bed of a turn-pike road, and erect poles and string wires, notwithstanding the objections of abutting property owners owning the fee in the bed of the road, on filing bond to secure such owners from loss.^{13***}

Where the poles and wires of an electric light company were erected upon a public highway, held, that this constituted an imposition of an additional servitude on the property in the highway of abutting property owners so as to entitle them to compensation.¹⁴

1232. Boroughs May Manufacture Electricity for the Supply and Use of Their Inhabitants—May Purchase Works Already Erected.

From and after the passage of this act, all boroughs now incorporated or that may hereafter be incorporated, shall have the right to manufacture electricity for commercial purposes for the

(13) *Jones v. Schuylkill Lt., Ht. & Pr. Co.*, 202 Pa., 164 (1902), reversing *Girardville v. Schuylkill Lt., Ht. & Pr. Co.*, 25 Pa. C. C., 600 (1901).

(13*) *Edison Elec. Ilg. Co. v. Tamaqua*, 13 D. R., 86 (1903).

(13**) *Monongahela City v. Monongahela Elec. Lt. Co.*, 12 Pa. C. C., 529 (1892); 3 D. R., 63.

(13***) *Brown v. Radnor Township Elec. Lt. Co.*, 208 Pa., 453 (1904); *Radnor Township Elec. Lt. Co.'s Pet.*, 208 Pa., 460 (1901); *Bucks County Lt., Ht. & Pr. Co. v. Phila. & Trenton R. R. et al.*, 27 Pa. C. C., 1 (1902); *Zanziger v. Wayne Elec. Lt. Co.*, 6 D. R., 577 (1898).

(14) *Haverford Elec. Lt. Co. v. Hart et al.*, 1 D. R., 571 (1892).

supply and use of the inhabitants of said boroughs, and may introduce the arc or incandescent electric light or any other form or style of electricity that may be deemed most expedient and desirable, and said boroughs may enact such ordinances as may be proper and necessary to introduce and supply the inhabitants of said boroughs who may desire to use the said electricity in their dwelling houses, store rooms and other places in said boroughs, and regulate by ordinances the price to be charged for the same: *Provided*, That in all boroughs so desiring to furnish electric lights, where electric light companies organized under laws of this Commonwealth are already furnishing electric lights to such borough or public, such borough shall endeavor, and is hereby authorized and empowered, to purchase the works of such corporation at such price as may be agreed upon by councils of said boroughs and a majority in value of the stockholders of such corporation.^{14*}

1233. Method of Assessing Value of Existing Plants When a Value Cannot Be Agreed Upon.

In case of failure so to agree, such borough may present a petition to the Court of Common Pleas of the county in which such borough is located, asking for the appointment of viewers to assess the value of the plant and works so taken; whereupon the court shall appoint seven discreet and disinterested freeholders of said county, neither of whom shall be stockholders in said corporation or taxpayers in said borough, and shall appoint a time for their meeting, of which meeting ten days' notice shall be given to all parties in interest. And the said viewers having first been duly sworn or affirmed, faithfully, justly and impartially to appraise said property, and having viewed the premises and taken such testimony as may be offered by either party touching the value of said property, and franchises, they shall estimate and determine what amount of damage has been or may be sustained by such corporation, and to whom payable, and make report thereof to the said court, which report having been confirmed by the said court judgment shall be entered thereon.

Each of said viewers shall be entitled to receive two dollars for each day necessarily employed in the performance of the duties herein prescribed.

(14*) Sec. 1, Act of May 20, 1891, P. L., 91.

Either party may at any time, within thirty days after the confirmation of such report, appeal therefrom to the said court.

After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment either party may have an appeal to the Supreme Court in the manner prescribed in other cases.

The court shall have power to order what notices shall be given in connection with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite.

If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of, and if allowed, a new view shall be ordered, and if disallowed the appeal shall proceed as before provided.¹⁵

1234. Increase of Indebtedness in Order to Provide for the Manufacture of Electricity by Boroughs.

Before any debt shall be contracted or incurred by any borough for the manufacture of electricity for the purposes mentioned and specified in section one of this act, the question of the right to increase the debt of said boroughs for said purposes shall first be submitted to the qualified voters of said boroughs, in the manner now provided by law for the increase of the indebtedness of municipal corporations in this Commonwealth.¹⁶

1235. Increases of Indebtedness Heretofore Made for Said Purpose Validated.

The provisions of this act shall apply to all boroughs now incorporated which have already provided a plant for the manufacture of electricity for lighting said boroughs at public expense, or for commercial purposes for the use of the inhabitants of said boroughs, and all indebtedness heretofore contracted or incurred by said boroughs, in pursuance of a vote of the electors of said boroughs in the manner now provided by law for the increase of the indebtedness of municipal corporations in this Commonwealth, is hereby made valid and confirmed.¹⁷

(15) Sec. 2, Act May 20, 1891, P. L., 90. See Sec. 904.

(16) Sec. 2, Act of May 20, 1891, P. L., 90.

(17) Sec. 3, Act of May 20, 1891, P. L., 90.

1236. Recovery of Damages for Injuries to Trees Inflicted by Electric Light Companies on Highways."

1237. Companies May Contract With Each Other for Use of Wires, Poles and Conduits.

It shall and may be lawful for corporations, for what purpose soever formed, and lawfully using electrical current, within this Commonwealth, to enter into contracts with each other for use of the same poles, wires and conduits, or for the purchase and sale of electrical current, or for the lease and operation of each other's systems, upon such terms and conditions as they may agree upon: *Provided*, That nothing in this act contained shall be construed to give to any company any rights to erect or maintain poles, wires or conduits upon any street or road not already so occupied, unless the consent of the local authorities shall have been first obtained.¹⁹

This act applies only to corporations already occupying a highway or having a clearly defined legal right to do so, and does not apply to a case where a traction company occupying a highway contracts with an electric transmission company, having no legal right upon the highway, to permit it to erect higher poles in place of those used by the traction company and use all above a certain distance on such poles for its wires.²⁰

(18) See Chapter on Telegraph and Telephone Companies.

(19) Act March 19, 1903, P. L., 34.

(20) *Young v. York Haven Transmission Co.*, 15 D. R., 843 (1906); 32 Pa. C. C., 81; 9 Dauphin Co. Rep., 59.

CHAPTER LI.

ELECTRIC TRANSMISSION COMPANIES.

1238. *Electric Transmission Companies.*

In addition to electric light, heat and power companies the operations of which are confined to a single municipality (See Sec. 1228), corporations for the transmission of electricity for the furnishing of power, to operate indefinitely throughout the State, have been formed of late years. In a notable case such a corporation was chartered under the provisions of Sec. 1 of the Act of May 1, 1876, P. L., 90, "for the transaction of any business in which electricity over or through wires may be applied to any useful purpose."

It is evident, however, that no corporation for the purpose of the transmission of power may be incorporated under the provisions of said act. In the first place, the title to the act, which is as follows: "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, relative to the incorporation and powers of telegraph companies for the use of individuals, firms and corporations, and for fire alarms, police and messenger business," would not support such a purpose.

In the second place, the "business" referred to in the last clause of the said section should properly be construed to mean business of the general nature of that specifically described in the preceding portion of the section. It certainly was not intended by the Legislature to provide for the incorporation of companies for the transmission of electric power, in an act relating to telegraph companies.²¹

The validity of a charter of a transmission company incorporated under the Act of 1876 was questioned in the case of *Young v. York Haven Electric Transmission Company and Central Pennsylvania Traction Company*, 32 Pa. C. C., 81 (1906), but the

(21) See Whitworth's *Creation of Corporations for Profit*, P. 45.

court held that, in the case before it, its inquiry was limited to the face of the charter.

A corporation for the transmission of electricity generated by water-power may, however, be formed by taking out a charter for the purpose of supplying water-power to the public. Such a company may, under the provisions of the Act of July 2, 1895, P. L., 425,²² develop electric power for commercial purposes by means of water power, and may, apparently, extend its wires as widely as it may see fit, with the consent of the councils of the cities and boroughs and of the supervisors of the townships in which the same shall be located.

An indirect way of forming an electric transmission company, to operate in more than one municipality, however the power may be generated, is by taking out charters for light, heat and power companies to operate in the desired number of municipalities or townships, respectively, and then merging the same.

An application for the incorporation of an electric transmission company under that provision of Par. 18 of Sec. 2 of the Act of April 29, 1874 (See Sec. 70), which provides for the incorporation of "companies for the transaction of any lawful business," was recently refused by the Governor. This provision, of itself, without more, confers merely the power to be a corporation on the companies formed under it, which companies would, therefore, have no right to exercise the powers necessary for the purposes of an electric transmission company. The proviso to Cl. 4, Sec. 34, of the Act of April 29, 1874, however, confers upon corporations organized for any of the purposes set forth in the eighteenth paragraph of Sec. 2 of said act, all the rights, privileges and powers conferred by said paragraph, including the right to store, transport and furnish water. If, then, a corporation formed under the provision for the incorporation of companies for the transaction of any lawful business, has, by virtue of said clause of section thirty-four of the Act of 1874, the power to store, transport and furnish water, it would also have under the provisions of the Act of July 2, 1895, the right to develop and transmit electric power generated by water power.

It is uncertain, however, whether Cl. 4 of Sec. 34 of the Act of April 29, 1874, relates to corporations formed after the passage of said act; and it is evident that provision should be made by law for the incorporation of corporations to furnish electric power, however generated, in more than one municipality.

(22) See Sec. 1780.

CHAPTER LII.

EXHIBITION COMPANIES.

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| 1239. Incorporation Authorized—
Powers. | Mortgage Constituted a Cor-
poration. |
| 1240. Articles of Association—
Application for and Granting of
Charter. | 1243. Taking of Public Lands
Under Right of Eminent Do-
main. |
| 1241. Power to Borrow Money—
Bonds—Mortgages. | 1244. Acceptance of Act by Com-
panies not for Profit Hereto-
fore Incorporated. |
| 1242. Purchasers at Sale Under | |

1239. Incorporation Authorized—Powers.

Corporations may be formed, in the manner herein mentioned, by the voluntary association of five or more persons, or as otherwise hereinafter provided, for the purpose of educating the public by exhibiting artistic, mechanical, agricultural and horticultural products and providing public instruction in the arts and sciences: *Provided, however,* That no such company shall be organized for profit, but all contributions thereto by members or others, and all proceeds realized from the business of such company, shall be applied to the purpose declared in its charter. When so formed, such company, by virtue of its existence, shall have the following powers:

First. To have perpetual succession by its corporate name, subject to the power of the General Assembly and the Constitution of the Commonwealth.

Second. To maintain and defend judicial proceedings.

Third. To make and use a common seal and alter the same at pleasure, and to accept and use such contributions and loans, from its members, or others, of money or property, real or personal, as may be advantageous to the purpose of its organization.

Fourth. To hold, purchase, maintain, lease, mortgage, sell and transfer real and personal property as the purposes of the corporation may require, and the right also to enter upon, take and occupy such public lands, easements and other property, as may be required, from time to time, for the purposes of its corporation.

Fifth. To appoint and remove and suitably compensate such officers and agents as the business of the company requires.

Sixth. To make by-laws, not inconsistent with law, regulating its membership and the election of its officers and directors, and the management of its property and business affairs.

Seventh. To enter into any obligation necessary for the transaction of its business.¹

Academies and similar educational corporations may not be incorporated under the provisions of the Act of June 14, 1887.^{1*}

1240. Articles of Association—Application for and Granting of Charter.

The charter of such intended corporation shall be subscribed by five or more persons, all of whom shall be citizens of this Commonwealth, who shall certify in writing to the Governor:

First. The name of the corporation.

Second. The place where its business is proposed to be conducted, at which place shall be located its general office.

Third. The names and residences of the subscribers.

Fourth. The number of its directors and the names and residences of those chosen for the first year.

Notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the county within which the general office is proposed to be located, once a week for three weeks, setting forth briefly the character and object of the proposed corporation, the intention to apply for such charter and the location of its general office and principal place of business. Such certificate shall give the name and address of the treasurer of the company, which may be an incorporated State or National bank, authorized to do business within the county where the principal office of the proposed corporation is located; said certificate shall be acknowledged by at least three of the subscribers thereto before the recorder of deeds of the county in which the principal office is located, and the subscribers shall also make and subscribe an oath or affirmation before him, to be endorsed in such certificate, that the statements therein contained are true; the certificate so endorsed, accompanied with proof of publication of notice as hereinbefore provided shall then

(1) Sec. 1, Act June 14, 1887, P. L., 383.

(1*) Warren Academy of Sciences, 29 Pa. C. C., 30 (1903).

be produced to the Governor of the Commonwealth, who shall examine the same and, if he find it to be in the proper form and within the purposes herein named, shall endorse his approval thereon, and direct letters patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen, and the original certificate, with all its endorsements, shall be recorded in the office of the Secretary of the Commonwealth, in a book to be kept by him for such purpose, and he shall forthwith furnish to the Auditor General an abstract therefrom, showing the name and location of the company and the name and address of its treasurer. The original certificate, with all of its endorsements, shall then be recorded in the office for recording deeds, in the county in which is located its general office, and from thenceforth the subscribers thereto, their associates and successors, shall be a corporation for the purposes and upon the terms named in said certificate: *Provided*, That no franchise granted under this act shall be exercised for the exclusive use or benefit of any part or class of the public.²

1241. Power to Borrow Money—Bonds—Mortgages.

It shall be lawful for any corporation named in this act to borrow money and secure any indebtedness created by it, by issuing bonds, not to exceed the sum of five hundred thousand dollars, with or without interest coupons attached thereto, and to secure the same by a mortgage or mortgages, for the use of its bondholders, upon its property, real and personal, and its franchises; but no such bond or indebtedness shall bear a rate of interest exceeding six per centum per annum.³

It shall be lawful for any body corporate which has been or may hereafter be incorporated by or under the laws of this Commonwealth, with powers and franchises to hold and maintain an exhibition of natural and artificial objects and products, anywhere within this Commonwealth, or elsewhere, to mortgage any or all of its real and personal property, of any and every description, and also all its franchises and privileges, for the purpose of securing the payment of any indebtedness or evidences of indebted-

(2) Sec. 2, Act June 14, 1887, P. L., 383.

(3) Act June 25, 1901, P. L., 599, amending Sec. 3, Act June 14, 1887, P. L., 383.

ness which such body corporate may create according to law, with the same effect as to the interest of such corporation in such property of any kind, and in its franchises, as in the case of the mortgaging of a freehold interest and title, as to lien, notice, evidence and priority of payment: *Provided*, That such mortgage shall be acknowledged and recorded in the same manner as mortgages of real estate.¹

Any mortgages which may be created by virtue of the preceding section shall be sued out in the same manner as the law shall provide for mortgages of real estate.²

1242. Purchasers at Sale Under Mortgage Constituted a Corporation.

The person or persons for whom or on whose account the property and franchises of any such corporation may be purchased at any sale which may be had under and in pursuance of any mortgage which may be created under the provisions of the first section of this act, shall be and they are hereby constituted a body politic with all the rights, immunities and privileges, and subject to all the restrictions and liabilities of the corporation whose property and franchises may be thus sold.³

1243. Public Lands Under Right of Eminent Domain.

The taking of such public lands for the erection and maintenance thereon of buildings, or other structures, for the public exposition of manufactured articles, agricultural products, minerals, and all articles pertaining to the arts and sciences, and providing public instruction in the arts and sciences, by the exercise of the right of eminent domain, is hereby declared to be taking of said land for public use. Any corporation chartered under this act for the purpose herein mentioned, or any corporation heretofore chartered for like purpose, and accepting the provisions of this act, as hereinafter prescribed, shall have the right of eminent domain for the purpose of appropriating to its use such public lands, easements, and other property, as may be necessary for the purpose of its incorporation; such right, however, shall not be exercised as to any burying ground, passenger railroad station house,

(1) Sec. 1, Act April 17, 1878, P. L., 22.

(2) Sec. 2, Act April 17, 1878, P. L., 22.

(3) Sec. 3, Act April 17, 1878, P. L., 22.

nor as to any street, alley, highway, wharf-landing, or other property of any incorporated city, town or borough without the consent of its councils first had to such appropriation, by ordinance duly passed and approved, nor shall such right in any event be exercised as to any tide water wharf, nor as to that part of any other public wharf, or river landing, which has been theretofore graded and paved by the municipality, and if not so graded and paved, such wharf or river landing may be appropriated as herein provided, any limitation of use thereof by the municipality by donation, dedication, appropriation, statute or otherwise, to the contrary notwithstanding.⁴

1244. Acceptance of Act by Companies Not for Profit Heretofore Incorporated.

Any company heretofore incorporated not for profit, and for any of the purposes named in this act, upon accepting the provisions of this act, in writing under the seal of the corporation, filed in the office of the Secretary of the Commonwealth, together with a surrender of its letters patent or charter, which shall be filed with such certificate, shall thereupon become and be a body corporate hereunder and shall be entitled to and possessed of all the privileges, franchises and powers conferred by this act upon corporations to be created under this act, and all the properties, rights and privileges belonging to such corporation theretofore acquired by gift, grant, conveyance, municipal ordinance, assignment or otherwise, upon such surrender, shall be and is hereby ratified, approved, confirmed, and assured to such corporation, with like effect and to all intents and purposes as if the same had been originally acquired by and under authority of this act; and such corporation shall thereafter be governed solely by the provisions of this act; and the Governor shall forthwith cause new letters patent, under this act, to issue to such corporation under the same name as the company had in the charter under which it was originally incorporated.⁵

(4) Sec. 4, Act June 14, 1887, P. L., 383.

(5) Sec. 5, Act June 14, 1887, P. L., 383.

CHAPTER LIII.

HOTEL, DROVE YARD, BOARDING HOUSE, THEATRE, OPERA HOUSE,
MARKET HOUSE, LIVERY AND BOARDING STABLE COMPANIES.

1245. Incorporation Authorized.

1246. Powers of Such Companies.

1245. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XIII. The establishment and maintenance of an hotel and drove yard or boarding-house, theatre, opera and market house, livery or boarding stable, or either.¹

1246. Powers of Such Companies.

Companies incorporated under the provisions of this act, or similar companies already incorporated and accepting the same, for holding, leasing and selling real estate, or for the establishment or maintenance of a hotel or boarding-house, or opera and market house, hotel and drove yard, or both, any or either, shall have the right and power to take, receive, hold and enjoy, either by conveyance, fee simple or for any less estate, or upon ground-rent, or for both, all the buildings, lots of land, premises, appurtenances necessary to the successful maintenance and carrying on of such business; shall have the power to execute the necessary and proper covenant for securing the payment of ground-rent on any of such lands and premises; shall have power to sell and convey, let or lease all or any parts of said lots, or the tenements and buildings thereon erected, either for cash or on ground rent, or partly for cash and partly on ground-rent, and shall have power to hold or erect such buildings, fixtures and appurtenances, and procure such furniture and equipments as may be necessary for the success of its business; and the said corporation may borrow money, in the manner provided in Sec. 13 of this act, to an

(1) Act May 29, 1901, P. L., 295, amending Sec. 2, Act April 29, 1874.

amount equal to the capital stock of the company paid up, and secure the same by mortgage upon the said lots, buildings and fixtures and appurtenances.²

(2) Sec. 10, Act April 17, 1876, P. L., 36, amending Sec. 36, Act of April 29, 1874, P. L., 96. The Act of May 29, 1901, P. L., 295, which added theatre companies to Clause XIII., part 2, of Sec. 2, Act April 29, 1874, did not amend Sec. 35 of said act so as to make it apply to theatre companies. The powers of theatre corporations, are, therefore, the general powers conferred by the Act of 1874, only.

CHAPTER LIV.

INCLINE PLANE COMPANIES AND TUNNEL OR UNDERGROUND PASSAGEWAY COMPANIES.

1247. Incorporation Authorized.

INCLINE PLANE COMPANIES.

- 1248. Powers.
- 1249. Other Corporations May Subscribe for Their Stock.
- 1250. May Contract for Purchase of Land—Eminent Domain.
- 1251. Power to Erect Gates and Demand Toll.
- 1252. Penalty for Demanding Illegal Fares.
- 1253. Accounts—Dividends.
- 1254. Penalty for Injuring Company's Works.
- 1255. Causeways to be Deemed Public Highways.
- 1256. Beginning and Completion of Work.
- 1257. Leases of Incline Plane Companies.

1258. No exclusive Privilege.

TUNNEL AND UNDERGROUND PASSAGEWAY COMPANIES.

- 1259. Powers.
- 1260. Other Companies May Take Shares of Stock in.
- 1261. Purchase of Land—Eminent Domain.
- 1262. Power to Erect Gates and Demand Tolls, and to Contract for Use of the Tunnel.
- 1263. Penalty for Demanding or Collecting Excessive Tolls.
- 1264. Penalty for Injuring or Destroying Property of Company.
- 1265. Tunnels to be Public Highways.
- 1266. Beginning and Finishing of Work on Tunnel.

1247. Incorporation Authorized.

Corporations may be formed under the provisions of this act . . . for . . . XXIV. The formation and operation of incline planes for the transportation of passengers and freight, or for the construction and maintenance of tunnels or underground passageways.¹

INCLINE PLANE COMPANIES.

The companies incorporated under the provisions of the act to which this is a supplement, for the erection and maintenance of incline plane railways operated by stationary engines, and the

(1) Sec. 1, Act April 29, 1874, and Par. 24, of Class 2, Sec. 2, Act of April 29, 1874, as amended by Act of June 25, 1895, P. L., 311.

carriage of passengers and freight thereon shall, from the date of the letters patent creating the same, be governed, managed and controlled as follows, and shall be entitled to the statute to which this is a supplement:—²

1248. Powers.

The directors of such corporation shall have full power and authority to appoint, agree and contract with such engineers, contractors, laborers and other persons, as they may think necessary, to make and construct or operate such incline plane and other buildings, and collect the fares hereinafter authorized, and fix their compensation, to purchase real estate in quantities not exceeding ten acres at any one time, and to sell and improve the same in such manner as they may determine, and to do and transact all other acts, matters and things as by the by-laws of such corporation may be intrusted to them.³

1249. Other Corporations May Subscribe for Their Stock.

It shall and may be lawful for any incorporated company of this Commonwealth or elsewhere, to subscribe and take shares of stock in any corporation incorporated for the purposes named in this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon.⁴

1250. May Contract for Purchase of Land—Eminent Domain.

Before the directors of any such corporation shall proceed to erect any such inclined plane or other buildings, it shall be lawful for them to contract with the owner or owners of any land, for the purchase of so much thereof as may be necessary for the purpose of such inclined plane company; but in case they cannot agree, then proceedings shall be had for the condemnation of said lands as provided in section forty-one of the act to which this is a supplement.⁵

1251. Power to Erect Gates and Demand Tolls.

When such corporation shall have erected any inclined plane

(2) Sec. 1, Act of May 1, 1876, P. L., 84.

(3) Clause 1, Sec. 1, Act of May 1, 1876, P. L., 84.

(4) Clause 2, Sec. 1, Act of May 1, 1876, P. L., 84.

(5) Clause 3, Sec. 1, Act May 1, 1876, P. L., 84.

under the authority of this act, the property thereof shall be vested in the said corporation, and it shall have the power to erect gates, and to demand such rates as the directors thereof shall from time to time determine, not exceeding six cents for the carriage of each passenger, and for the carriage of freight, packages, et cetera, ten cents per hundred weight or fractional part thereof; the directors of said corporation to have power to determine the classes of freight to be carried, and they shall cause to be put up and kept in some conspicuous place in the station houses of said incline plane, an exhibit of the rates of fare fixed by them.⁶

1252. Penalty for Demanding Illegal Fares.

If the said corporation, or any person employed by it, shall demand or collect greater fares than are prescribed in the exhibit of fares put up in the station houses as aforesaid, he or it shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar amount are recovered, one-half to be paid to the county and the other half to the person suing for the same.⁷

1253. Accounts—Dividends.

Said corporation shall keep a just account of all moneys received by its agents, and after deducting all expenses and such proportion of the income as may be sufficient for a fund to provide against the decay, repairing and rebuilding of said plane, that time and accident may render necessary, shall semi-annually declare and make a dividend of the balance among the stockholders, first giving notice, personally or by advertisement, of the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly in ten days thereafter, or as soon as the same shall be demanded.⁸

1254. Penalty for Injuring Company's Works.

If any person shall break, pull down or destroy any part or parts of said inclined plane, or other property of the said corporation, or shall wilfully obstruct the passage in or to the said inclined plane, or any part or parts thereof, each such person shall forfeit and pay to the said corporation the sum of ten dollars for

(6) Clause 4, Sec. 1, Act May 1, 1876, P. L., 84.

(7) Clause 5, Sec. 1, Act May 1, 1876, P. L., 84.

(8) Clause 6, Sec. 1, Act of May 1, 1876, P. L., 84.

each and every such offense, to be recovered as other debts of like amount are recoverable, and if any person shall be guilty of carrying any lighted cigar or pipe, or carrying fire into the station houses and buildings of the corporations in any manner except in a lantern, or shall discharge any pistol or gun, or any fire-works in or near the buildings of said company, each one so offending shall forfeit and pay the said corporation the sum of five dollars for every such offense, to be recovered in like manner as aforesaid; but no suit shall be brought for any of the aforesaid offenses unless commenced within thirty days after it shall be known who committed said offenses, and he, she or they shall remain liable to action at the suit of the corporation for any of the wrongs enumerated in this clause, if the sums herein mentioned be not sufficient to repair or satisfy said damage.⁹

1255. Causeways to Be Deemed Public Highways.

The causeways or other approaches to the station houses of any inclined plane chartered under the act to which this is a supplement, shall be deemed to be and taken as public highways, and subject to the same penalties for obstruction thereof as may now or may hereafter be enforced for the obstruction of public streets in the municipality in which said approaches may be located.¹⁰

1256. Beginning and Completion of Work.

If any company incorporated under this law for the purpose of erecting an inclined plane, as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters patent, or shall not within the space of five years thereafter complete the same, the rights and privileges granted to the said corporation shall revert to the Commonwealth.¹¹

1257. Leases of Incline Plane Companies.

An incline plane company, incorporated under special Act of March 23, 1870, P. L., 1871, p. 1462, with power to construct an incline plane and passenger railway, with "all the powers and privileges as are contained in the act regulating railroad com-

(9) Clause 7, Sec. 1, Act of May 1, 1876, P. L., 84.

(10) Clause 8, Sec. 1, Act May 1, 1876, P. L., 84.

(11) Clause 9, Sec. 1, Act May 1, 1876, P. L., 84.

panies, approved February 18, 1849," has power to lease its property to another passenger road under the Act of April 23, 1861, P. L., 410, and the Act of February 17, 1870, P. L., 31.¹²

An absolute passage of the same cars from one road to another without break or interruption is not necessary to constitute a "connected line," within the meaning of the Act of April 23, 1861, or a "continuous route," within the meaning of the Act of February 17, 1870, which act does not repeal the former. And an incline plane organized as above may lease its whole system to another passenger railway company, where one of the railway lines of the lessor forms a continuous route with the road of the lessee notwithstanding the break made by the incline plane, in the centre of the line of the lessor.¹³

1258. No Exclusive Privilege.

The special Act of March 3, 1870, authorizing the Mount Oliver Inclined Railway Company to construct one or more inclined planes from any point or points in three contiguous boroughs to the brow of the hill in the same, and granting to it the location privileges contained in the general railroad acts, confers no exclusive privileges upon the company, and is no hindrance to the incorporation of another company to operate an incline plane within the same territory, especially where for twenty-two years after incorporation the former company had not exercised the franchise in the locality.¹⁴

TUNNEL AND UNDERGROUND PASSAGEWAY COMPANIES.

1259. Powers.

Companies incorporated under the provisions of the act to which this is a supplement for the construction and maintenance of tunnels or underground passageways shall, from the date of the letters patent creating the same be governed, managed and controlled as follows:

The directors of such corporation shall have full power and authority to appoint, agree and contract with such engineers, contractors, laborers and other persons as they may think necessary

(12) *Hampe et al. v. Pitts. & Birmingham Traction Co.*, 165 Pa., 468 (1895).

(13) *Hampe v. Pitts. & Birmingham Traction Co.*, 165 Pa., 468 (1895).

(14) *In re Park Incline Plane Co.*, 30 W. N. C., 256.

to make and construct and operate such tunnel or underground passageway and buildings, and collect the tolls provided for, and fix their compensation, to purchase real estate necessary therefor, and to sell and improve the same in such manner as they may determine, and to do and transact all other acts, matter and things as by the by-laws of such corporation may be intrusted to them.¹⁵

1260. Other Companies May Take Shares of Stock In.

It shall and may be lawful for any incorporated company of this Commonwealth, or elsewhere, to subscribe and take shares of stock in any corporation incorporated for the purposes named in this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon.¹⁶

1261. Purchase of Land—Eminent Domain.

Before the directors of any such corporations shall proceed to construct any such tunnel or underground passageway, it shall be lawful for them to contract with the owner or owners of any land for the purchase of so much thereof as may be necessary for the purpose of such tunnel or underground passageway, or for the right of way through or under the same; but in case they cannot agree with the owner or owners of said land, then proceedings shall be had for the condemnation of said land as provided in section forty-one of the act to which this is a supplement.¹⁷

1262. Power to Erect Gates and Demand Tolls and to Contract for Use of the Tunnel.

When said corporation shall have constructed any tunnel or underground passageway under the authority of this act, either for the passage of persons or traffic, or as a drainage way for the drainage of lands or mines, the property thereof shall be vested in the said corporation, and it shall have power to erect gates and to demand such tolls or compensation as the directors thereof shall, from time to time, determine for permitting the passage of persons or traffic or drainage water through such tunnel or tunnels or underground passageways, and the directors thereof shall

(15) Sec. 2, Act of June 25, 1895, P. L., 311.

(16) Clause 2, Sec. 2, Act of June 25, 1895, P. L., 311.

(17) Clause 3, Sec. 2, Act of June 25, 1895, P. L., 311.

also have full power and authority to contract with corporations and individuals for the use thereof, and they shall cause to be put up and kept in some conspicuous place in the station house of the said tunnel, when used for the passage of persons or traffic, an exhibit of the rates of fare or charges fixed by them for the use thereof.¹⁸

1263. Penalty for Demanding or Collecting Excessive Tolls.

If said corporation, or any person employed by it, shall demand or collect any greater tolls or charges than are prescribed in the exhibit of tolls or charges put up in the station house as aforesaid of a tunnel used for the passage of persons or traffic, he or it shall forfeit for every such offense the sum of ten dollars, to be recovered as debts of a similar nature are recovered, one-half to be paid to the county and the other half to the persons suing for the same.¹⁹

1264. Penalty for Injuring or Destroying Property of Company.

If any person shall break, mutilate or destroy any part or parts of the said tunnel or underground passageway or other property of the said corporation, or shall wilfully obstruct the passageway in or to said tunnel or underground passageway, or any part or parts thereof, each such person shall forfeit and pay to the said corporation the sum of ten dollars for each and every such offense to be recovered as other debts of a like amount are recoverable; and if any person shall be guilty of carrying any lighted cigar or pipe or carrying fire into the station houses and building of the corporation, or shall discharge any pistol or gun or any fire works in or near the said tunnel or underground passageway or buildings of the said company, each one so offending shall forfeit and pay to the said corporation the sum of ten dollars for every such offense, to be recovered in like manner as aforesaid, but no suit shall be brought for any of the aforesaid offenses unless commenced within thirty days after it shall be known who committed said offenses, and he, she or they shall remain liable to such action at the suit

(18) Sec. 1, Act of July 15, 1897, amending Clause 4, Sec. 2, Act of June 25, 1895, P. L., 211.

(19) Sec. 2, Act July 15, 1897, P. L., 277, amending Clause 5, Sec. 2, of the Act of June 25, 1895, P. L., 311.

of the corporation for any of the wrongs enumerated in this clause if the sums herein mentioned be not sufficient to repair or satisfy said damage.²⁰

1265. Tunnels to Be Public Highways.

Such tunnels or underground passageways and the approaches thereto when used for the passage of persons or traffic, shall be deemed to be and taken as public highways, and subject to the same penalties for obstructions thereof as may now or shall hereafter be enforced for the obstruction of public streets in the municipality in which said approaches may be located.²¹

1266. Beginning and Finishing of Work on Tunnel.

If any company incorporated under this act for the purpose of constructing and maintaining a tunnel or underground passageway as aforesaid, shall not proceed to carry on said work within the space of two years from the date of its letters patent, or shall not, within the space of five years thereafter, complete the same, the rights and privileges granted to the said corporation shall revert to the Commonwealth.²²

(20) Clause 6, Sec. 2, Act of June 25, 1895, P. L., 311.

(21) Sec. 3, Act July 15, 1897, P. L., 277, amending Clause 7, Sec. 2, of the Act of June 25, 1895, P. L., 311.

(22) Clause 8, Sec. 2, Act of June 25, 1895, P. L., 311. It seems that the time for constructing and maintaining tunnel or underground construction companies may not be extended by the courts under the provisions of the Act of May 16, 1889, P. L., 242. *Pittsburgh Tunnel Co.*, 50 Pitts. L. J., 1 (1902).

CHAPTER LV.

INSURANCE COMPANIES.

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MUTUAL ASSESSMENT LIFE AND ACCIDENT INSURANCE COMPANIES.

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FOREIGN INSURANCE COMPANIES.

1267. Incorporation Authorized.

Any ten or more persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act and form an incorporated company for any of the following purposes, to wit:

First. To make insurance, either upon the stock or mutual principle, against fire on all kinds of buildings, merchandise and other property, and to effect marine and inland insurance on vessels, cargoes and freights, and on merchandise and other property in course of transportation.

Second. To make insurance either upon the stock or mutual principle, upon the lives of individuals and every insurance appertaining thereto or connected therewith, and to grant and purchase annuities.

Third. To make insurance either upon the stock or mutual principle, upon the health of individuals and against personal injury, disablement or death resulting from traveling or general accidents by land or water, or accidents resulting from the pursuit of any trade or business, and against injuries of every nature and description to persons or property, causing loss, damage or liability and also against any unknown or contingent event or liability whatever, except the perils and risks enumerated in the first second and fourth paragraphs of this section.

Fourth. To make insurance either upon the stock or mutual principle, upon the lives of horses, cattle and other live stock: *Provided further*, That whenever any existing company working under the provisions of this act shall, by resolution of its board of directors, accept of the provisions of the third sub-division of this section of this act as part of the charter of said company, and a duly certified copy of such resolution shall have been filed in the office of the Insurance Commissioner, and said resolution shall have been approved by him, the charter of said company shall be deemed and taken to have been amended by the addition thereto of the third sub-division of this section, which shall have the same force and effect as if a part of the company's original charter constituting a supplement thereto. And any company organized under this act, or any company authorized to transact fidelity insurance business, incorporated prior to the act hereby amended, and having a paid up capital of not less than five hundred thousand dollars (\$500,000) upon depositing with the Insurance Commissioner of this State the sum of two hundred thousand dollars (\$200,000) in cash, or in securities which in his judgment are of that value, shall receive a certificate from the said Insurance Commissioner which shall entitle it to transact business under one of the four sub-divisions of this section and also to re-insure the risks assumed by any policy or policies issued by any company or

companies under any one of said sub-divisions, which business shall be subject to the provisions of the act approved April fourth, one thousand eight hundred and seventy-three, entitled "An act to establish an Insurance Department," and the several supplements thereto.¹

1268. Articles of Association—Name.

Such persons shall associate themselves together, by articles of agreement in writing, for the purpose of forming an insurance company, which agreement shall specify the name by which the corporation shall be known, the class of insurance for the transaction of which it is constituted, the plan or principle upon which the business is to be conducted, the place in which it is to be established or located, the amount of its capital stock, if any, the general objects of the company, the proposed duration of the same and the powers it proposes to have and exercise. Any name not previously in use in any existing company may be adopted, but such name must clearly designate the object and purposes of the company, and if a mutual company the word "mutual" must appear in the title thereof. The Insurance Commissioner may reject any name or title, when in his judgment it too closely resembles that of any existing company or is likely to mislead the public.²

1269. Acknowledgment of Articles—Approval Thereof.

The subscribers to said articles of agreement shall acknowledge the same before some person empowered to receive acknowledgment of deeds, and forward the same to the Insurance Commissioner, who shall, in case he approves of the title of the proposed company, submit said articles of agreement to the Attorney General for examination, and if found by the Attorney General to be in accordance with the provisions of this act, and not inconsistent with the Constitution of this State and of the United States, he shall certify the same to the Governor, with his approval indorsed thereon.³

(1) Sec. 1, Act May 1, 1876, P. L., 53, as amended by Act of July 9, 1897, P. L., 239. There was a prior amendment of May 23, 1895, P. L., 118.

(2) Sec. 2, Act May 1, 1876, P. L., 53.

(3) Sec. 3, Act of May 1, 1876, P. L., 53.

**1270. Selection of Officers to Serve Until First Annual Meeting—
Opening of Subscription Books.**

The subscribers to said articles of agreement shall choose from their number a president, a secretary, a treasurer, and such number of directors as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, or insured, as the case may be, and until their successors are duly chosen and qualified as hereinafter provided. In case a joint-stock company is to be organized, they shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed. In case the mutual company is to be organized for any of the purposes mentioned in the first or fourth paragraphs of the first section of this act, the subscribers to the articles of agreement shall open books to receive applications for insurance at convenient times and places, and keep the same open until applications for insurance have been obtained in sufficient number and amount to comply with the requirements of this act.⁴

1271. Capital Stock.

The capital stock of a joint-stock company shall be divided into shares of not less than ten dollars each, payment of which shall be made in lawful money, ten per centum on each share at the time of subscribing, and the balance at such times as the company may direct, not exceeding six months from the time of subscription; and the company may prescribe such rules with regard to forfeiture of partial payments on subscriptions as they may deem advisable, which rules shall be binding upon subscribers, provided they are made known at the time of subscription.⁵

1272. Letters Patent to Issue on Filing of Certificate of Subscriptions to Stock.

Whenever one-half of the capital stock mentioned in said articles of agreement shall have been subscribed, and twenty per centum on each share paid into the hands of the treasurer of the company, the president, treasurer, and a majority of the directors of said company shall, under their respective oaths or affirma-

(4) Sec. 4, Act of May 1, 1876, P. L., 53.

(5) Sec. 5, Act of May 1, 1876, P. L., 53.

tions, make a certificate to the Governor, stating the number and par value of the shares of stock in said company, the names and residence of the subscribers, the number of shares subscribed by each, the amount paid in on each share, and the amount of money in the hands of the treasurer on account of such payments, and where the same is deposited. Upon the receipt of such certificate, the Governor shall, in case he approves of the articles of agreement certified to him as hereinbefore provided, endorse his approval thereon, and cause letters patent to issue erecting the subscribers to said articles of agreement and their associates into a body corporate into succession under the name designated in said articles of agreement, but they shall not have the power to engage in the business of insurance until they have otherwise complied with the provisions of this act.⁶

1273. Mutual Companies to Make a Certificate to the Governor.

Whenever applications for insurance in the case of a mutual company mentioned in the first or fourth paragraphs of the first section of this act have been obtained in sufficient number and amount, the president, treasurer and a majority of the directors of said company, shall, under their respective oaths or affirmations, make a certificate to the Governor, stating the names and residence of the persons applying for insurance in said company and the amount agreed to be taken by each. Upon the receipt of such certificate, the Governor shall, in the same manner as is provided in the preceding section of this act, erect the subscribers to the articles of agreement and their associates into a body corporate, with succession under the name designated in said articles of agreement, with power to engage immediately in the business of mutual insurance mentioned in the articles of agreement aforesaid.⁷

1274. Guarantee Capital of Mutual Companies.

Companies organized for the purpose of conducting business upon the mutual principle, as mentioned in either the second or third paragraphs of the first section of this act, must have a guarantee capital before commencing business. If the purpose be to insure lives, said guarantee capital must be not less than two hundred thousand dollars, and if the purpose be to insure health

(6) Sec. 6, Act of May 1, 1876, P. L., 53.

(7) Sec. 7, Act of May 1, 1876, P. L., 53.

and against accidents, said guarantee capital must be not less than one hundred thousand dollars, fifty per centum of which shall be paid in cash before commencing business. Said companies shall be organized by articles of agreement, as hereinbefore prescribed, and the subscribers to said articles of agreement shall open books and receive subscriptions to the guarantee capital, as provided in the case of joint-stock companies. As soon as the entire amount of said guarantee capital has been subscribed, and fifty per centum thereof paid in lawful money to the treasurer, and the subscribers' obligations given for the remaining fifty per centum thereof, the president, treasurer, and a majority of the directors, shall, under their respective oaths or affirmations, make a certificate to the Governor, stating the number and par value of the shares, of guarantee stock in said company, the names and residences of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the form of obligation taken for the unpaid moiety, the amount of money in the hands of the treasurer, and where the same is deposited. Upon the receipt of said certificate, the Governor shall, in the same form and under the same conditions prescribed in this act for joint-stock companies, erect said subscribers and their associates into a body corporate with succession.⁸

1275. Recording of Articles of Association.

The Secretary of the Commonwealth shall cause the articles of association aforesaid, together with the proceedings had thereon and the certificate to the Governor, after the approval of the Governor has been endorsed on said articles of association and letters patent have issued, to be recorded in a book kept for that purpose; and he shall return said articles of association to the company who shall have the same recorded in the recorder's office of the county in which said company is located; and certified copies of said records may be used in evidence for or against the company with the same effect as the original.⁹

1276. When Certificates of Stock Shall Be Issued.

As soon as the whole amount of the capital stock of a joint-stock company, or fifty per centum of the guarantee capital of a mutual life or accident company, duly incorporated under this act, has

(8) Sec. 8, Act May 1, 1876, P. L., 53.

(9) Sec. 9, Act May 1, 1876, P. L., 53.

, certificates shall be issued therefor to the persons engaged in the same, which certificates shall be transferable at any time in the books of the company and the president or secretary of the company shall notify the Insurance Commissioner that the capital stock of the company has been paid in and that it is ready to do business, whereupon the Insurance Commissioner or by deputy, examine the assets of the company, and if he finds that it is possessed of money or assets in the manner hereinafter specified, equal to the amount of the capital stock, less the necessary expenses of organization, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in this State, which certificate shall empower the company to do business and otherwise do the business of insurance for which it is organized.¹⁰

Amount of Capital Stock Required.

Stock companies organized under this act for any of the purposes mentioned in the first division of the first section of this act shall have a capital stock of not less than one hundred thousand dollars. Mutual companies for any of the purposes mentioned in the second division of the first section of this act may accept risks and issue policies whenever applications for insurance to the amount of two hundred thousand dollars have been received and authority to commence business has been granted in the same manner as hereinbefore provided.¹¹

Stock companies organized to insure lives, as specified in the second division of the first section of this act, must have a capital stock of at least three hundred thousand dollars. Joint-stock companies organized to insure health or against accidents as specified in the third paragraph of the first section of this act, must have a capital stock of at least one hundred thousand dollars.

Stock companies organized for any of the purposes of insurance mentioned in the fourth division of the first section of this act must have a capital stock of at least one hundred thousand dollars, invested as required in this act for fire and marine insurance.

¹⁰ Act May 1, 1876, P. L., 53.

¹¹ Act May 1, 1876, P. L., 53.

¹² Act May 1, 1876, P. L., 53.

companies. Mutual companies, organized for any of the purposes mentioned in said division, may accept risks and issue policies upon complying with all the conditions hereinbefore prescribed for mutual fire insurance companies.¹³

1278. By-Laws—Seal.

Any company organized under this act shall have power to make such by-laws as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend, and to make and have a common seal, and change and alter the same at their pleasure.¹⁴

1279. Annual Election of Directors.

The annual meeting for the election of directors shall be held at such a time, in the month of January, as the by-laws of the company may direct; of the time and place of which meeting at least thirty days' previous notice shall be given to the stockholders, by publication not less than three times, in at least two daily papers published in the city of Philadelphia, if the company is located in the said city, or by similar publications in case the company is located in the city of Pittsburgh, or in case the company is located elsewhere by like publication in daily or weekly papers published in the proper county; and at such annual meeting the stockholders or members shall elect by ballot not less than five nor more than thirteen directors, to serve for one year and until their successors are duly chosen. At all elections for directors in joint-stock companies created under this act, each share of stock, and in mutual fire companies, each member, shall be entitled to one vote, subject to such regulations with regard to voting by proxy as the by-laws of the company may prescribe; and if for any cause the stockholders shall fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose on some subsequent day, of which notice shall be given as herein directed.¹⁵

1280. Officers.

The directors shall choose, by ballot, a president from their

(13) Sec. 13, Act May 1, 1876, P. L., 53.

(14) Sec. 14, Act May 1, 1876, P. L., 53.

(15) Sec. 15, Act May 1, 1876, P. L., 53.

, and shall fill all vacancies that may arise in the presidency thereof; and the board of directors, of them, when statedly convened at the office of the when convened after special notice given to each the board, shall be competent to exercise all the powers em by law. They shall also have power to appoint ries or compensation of a secretary and such other agents as they may deem necessary for the proper of the business of the company.¹⁶

ation of Policies.

of insurance made or entered into by the company le either with or without the seal thereof, and they scribed by the president or such other officer as may d by the directors for that purpose, and attested by y, and when so subscribed and attested shall be ob- the company.¹⁷

vestment of Capital of Fire and Marine Insurance Com- ies.

e unlawful for any fire or fire and marine insurance rganized under this act, to invest its capital, or any , otherwise than in bonds and first mortgages on im- unincumbered real estate, within the State of Penn- orth fifty per centum more than the sum loaned there- ve of buildings, unless such buildings are insured cy transferred to said company, or in ground rents, the United States or of the State of Pennsylvania, s of any other State that may be par at the time of e thereof, or in the bonds of any county, city or muni- the State authorized to be issued by law and upon efault in interest has been made, or in the first mort- of solvent railroad corporations upon which no de- rest has been made, and to lend the same, or any part the security of such bonds or evidences of indebted- change and re-invest the same as occasion may, from , require; but any money over and above the capital such company may be invested in the securities above

5, Act May 1, 1876, P. L., 53.

7, Act May 1, 1876, P. L., 53.

enumerated, or in the stock or other evidences of indebtedness of any solvent dividend-paying corporations created under the laws of this State or the United States, or loaned upon the pledge of the same, except their own stock: *Provided*, That the current market value of such securities shall be at least twenty per centum more than the sum loaned thereon.¹⁸

1283. Investment of Capital of Joint Stock Life Companies.

The whole capital of a joint-stock life insurance company organized under this act, shall be paid in and invested in bonds or notes of the United States, or in bonds of the State of Pennsylvania, or in first mortgages on improved and unincumbered real estate within the State, worth double the amount loaned thereon, exclusive of buildings, unless said buildings are insured and the policies transferred to the company, or in ground rents, or in bonds of any city or county of this State, authorized to be issued by law and upon which there has been no default in interest; and such company shall at all times maintain investments of the character above enumerated, which, in addition to the real estate it is authorized to hold under this act, shall be equal to the entire legal valuation of its outstanding policies and other liabilities; but any surplus over and above capital stock and other liabilities which it may accumulate in the course of business may be invested as is provided in this act for the investment of the surplus funds of fire insurance companies.¹⁹

1284. Loans.

Not more than one-half its capital stock shall be loaned by any company, organized under this act, on mortgage of real estate, and not more than one-tenth of its capital shall be invested in a single mortgage, nor shall any portion of the funds of the company be loaned on personal security. If any investment or loan is made in a manner not authorized by this act, the directors making or authorizing the same shall be personally liable for any loss occasioned thereby.²⁰

1285. Restrictions as to Holding Real Estate.

The real estate which it shall be lawful for any insurance com-

(18) Sec. 18, Act of May 1, 1876, P. L., 53.

(19) Sec. 19, Act of May 1, 1876, P. L., 53.

(20) Sec. 20, Act of May 1, 1876, P. L., 53.

fore incorporated under any general or special law
Commonwealth, or hereafter incorporated under any gen-
this Commonwealth, to purchase, receive, hold, and
be:

s shall be requisite for its immediate accommodation
nient transaction of business.

as shall have been mortgaged to it in good faith, by
rity for loans previously contracted, or for moneys

as shall have been conveyed to it in satisfaction of
ously contracted in the course of its dealings.

as shall be purchased at sales upon judgments, de-
mortgages, obtained or made for debts due said com-
debts due other persons, where said company may
incumbrances on the same and the purchase is deem-
to save the company from loss: *Provided*, That when-
company shall have the power of receiving and exe-
s, it shall be and is hereby authorized and empowered
eive, and hold all estates and property, real and per-
may be granted, committed, transferred, or conveyed
s consent, upon any trust or trusts whatsoever, at any
s, by any person or persons, body or bodies corporate,
ourt of the United States or of this State, and to ad-
fil, and discharge the duties of such trusts.²¹

Insurance Companies to Have Fifty Per Cent. of Guarantee Capital Paid In.

Companies organized for any of the purposes mentioned
the second or third divisions of the first section of this
ave fifty per centum of the guarantee capital paid in
d less the necessary expenses of organization, as pro-
s act for joint-stock life insurance companies.²²

Subscribers to Guarantee Funds to Give Notes.

Person subscribing to the guarantee fund of any com-
ized under this act shall give to said company his note
d, in such form as the by-laws of the company may pre-

of May 28, 1907, P. L., 296, superseding the provisions of
of May 1, 1876, P. L., 53.

2, Act of May 1, 1876, P. L., 53.

scribe, for the unpaid moiety of the guarantee fund so subscribed, which note or obligation shall be liable to assessment or assessments from time to time, as may be deemed necessary by the directors of said company for the successful prosecution of its business; and such assessments may be made to meet the losses, expenses, insurance reserve, and other obligations of such company, until the whole amount of such note or obligation shall be paid. All assessments shall be made pro rata upon the entire amount of unpaid subscriptions, and the same shall be collected by suit at law as other debts of like character are collectible.²³

1288. Subscribers to Receive Interest From Company.

The subscribers to the guarantee fund, or capital, of a mutual company incorporated for any of the purposes mentioned in either the second or third divisions of the first section of this act, shall be entitled to receive interest from such company, payable semi-annually, at such rate, not exceeding six per centum, as may be agreed upon at the time of subscribing: *Provided*, The net surplus over requisite reservation for liabilities and contingencies is sufficient to pay the same, and if less than the sum originally agreed on it shall be made equal to it when the profits of the company are sufficient. Whenever the lawfully invested assets of such company shall exceed the re-insurance reserve and other liabilities, to an amount equal to the amount of the guarantee fund subscribed, the directors, at their option, may retire or return all or such portion of the guarantee fund to the subscribers as the interests of the company may warrant, but no sum in cash shall be returned exceeding that actually paid with the interest due and unpaid on the guarantee fund subscribed.²⁴

1289. Policies for the Benefit of Married Women.

A policy of insurance issued by any company incorporated under this act, on the life of any person expressed to be for the benefit of any married women, whether procured by herself, her husband, or any other person, shall inure to her separate use and benefit, and that of her children, independently of her husband or his creditors, or the person effecting the same or his creditors. If the premium is paid by any person with the intent to defraud his creditors, an

(23) Sec. 23, Act of May 1, 1876, P. L., 53.

(24) Sec. 24, Act of May 1, 1876, P. L., 53.

l to the premium so paid with interest thereon shall
r benefit.²⁵

ends.

fire and marine insurance company organized under
l make any dividend except from the profits arising
iness, and in estimating such profits there shall be first
a liability the capital stock of the company, together
ount of the proposed dividend, one-half of all the pre-
ved and receivable on undetermined fire risks, and the
nt of premiums received and receivable on undeter-
e and inland navigation risks, and also all sums due
r on bonds and mortgages, bonds, stocks and book ac-
which no part of the principal or the interest thereon
id during the last calendar year, and for which the
or suit has not been commenced for collection, or
judgment obtained thereon, shall have remained more
ars unsatisfied, and on which interest shall not have
nd also all interest due or accrued and remaining un-
other debts or obligations of the company: *Provided*,
l not be lawful for any company aforesaid to make
ceeding ten per centum in any one year, unless its
k remains unimpaired, after charging as a liability,
to the items above enumerated, the entire amount of
ns received and receivable upon all risks undeter-
e time of making such dividend.²⁶

ase of Capital Stock.

ing fire or fire and marine insurance company, and
company formed under this act, may at any time in-
mount of its capital stock, or alter and change the par
shares thereof, if authorized so to do by the stock-
ing the larger amount in value of the stock, at a meet-
called for that purpose, of which at least sixty days'
blic notice shall have been given. At such meeting
holders and at all other meetings thereof each stock-
be entitled to cast, either in person or by proxy, sub-
regulations as to voting by proxy as the by-laws of the

5, Act of May 1, 1876, P. L., 53.

6, Act of May 1, 1876, P. L., 53.

company may prescribe, one vote for each share of stock that shall have stood to his or her name on the books of the company for at least three months previous thereto. Increase of capital stock as aforesaid may be made by increasing the number of the shares of stock, or by increasing the par value of the same, and such increased shares or increased par value shall be allotted pro rata to the stockholders of said company according to their interest, and may be paid, in whole or in part, out of the accumulated reserve of the company, in case the condition of the company warrants such allotments, or the same may be disposed of as is provided in this act for the organization of stock companies. The stockholders may direct the sale of the new stock by auction or otherwise, and for such price per share as they may designate, or may require the payment of any sum they may see fit for the right to subscribe for the increased stock to be issued: *Provided*, That new stock shall never be disposed of for less than the par value to be received by the company and constitute capital, and that every stockholder shall be entitled to a like option with all other stockholders of taking the new shares in proportion to his interest in the company, and that all moneys thus received, beyond the amount contributed for capital, shall be applied as directed by the stockholders; and the company may direct the sale of options not taken, after a reasonable time shall have been given for electing to take or refuse the same. No portion of the funds of a company shall be regarded as accumulated reserve, subject to allotment under this section, except such amounts as may remain after changing the entire amount of premium receipts on undetermined policies, in addition to capital stock and all other liabilities. Before any such company as aforesaid shall be authorized to increase its capital stock, or alter and change the par value of the shares thereof as herein provided, it shall file with the Insurance Commissioner a certificate setting forth the amount and manner of such desired increase, or of such desired alteration and change in the par value of the shares thereof, and the proceedings of the stockholders authorizing the same, and thereafter such company shall be entitled to have the increased amount of capital, or the alterations and changes in the par value thereof, fixed by said certificate; and the examination of securities composing the capital stock thus increased, or the par value of which has been so altered and changed, shall be made in the same manner as is provided in this act for capital stock originally paid in: *Provided further*,

incorporated company working under the provisions of the act shall not issue stock except for value received, and unless the cash actually represents cash in the reserve fund accumulated for the payment of policies issued by such corporations or for the use of the property owned by said corporations and necessary for the conduct of its business. Whenever any existing fire or fire marine insurance company shall, by resolution of its board of directors, accept of the provisions of this section of this act as a part of its charter of said company, and a duly certified copy of the charter shall have been filed in the office of the Insurance Commissioner, the charter of said company shall be deemed and shall have been amended by the addition thereto of this section, and shall have the same force and effect as if a part of the original charter constituting a supplement thereto.²⁷

Reduction of Capital Stock.

Whenever the capital stock of any joint-stock fire or marine insurance company, heretofore or hereafter organized, becomes overvalued, it shall be lawful for its board of directors, by a resolution adopted by at least two-thirds of the directors, to reduce the capital stock of said company in proportion to the extent of its overvaluation to an amount not less than that required by this act. In the organization of such company, the assent of the Insurance Commissioner having first been obtained to said reduction, the act in the Act of the fourth of April, one thousand eight hundred and seventy-three, establishing an Insurance Depart-

Renewal of Charters.

Whenever an insurance company of this State, whose charter is about to expire, shall call a special meeting of the members or stockholders, the object of which meeting shall be given, by advertisement published four weeks preceding, in at least two daily or weekly newspapers published in the city or county where the principal office of the company is located, or by circular mailed to the address of each member or stockholder. If at such meeting two-

²⁷ Act of April 15, 1891, P. L., 11, amending Sec. 27, Act of May 18, 1881, P. L., 53. There was a prior amendment of June 29, 1881, P. L., 53, amended to in the later amendment.
²⁸ Act May 1, 1876, P. L., 53.

thirds of the votes, cast in person or by proxy, shall favor a resolution agreeing that said corporation shall hold its charter subject to the provisions of the Constitution of this State, and setting forth at length the sections of its existing charter which it desires to retain, and agreeing to be subject to the provisions of this act, so far as not inconsistent with said charter, said resolution and the number of votes cast for and against the same, at the special meeting aforesaid, shall be spread on the records of said company, and a certified copy of the same forwarded to the Insurance Commissioner, who shall submit the same to the Attorney General, and in case he approves of said resolution, he shall certify his approval of said record to the Governor, who shall cause letters patent to issue, erecting said company into a body corporate with succession, as hereinbefore provided in the case of companies originally organized, with all the powers and privileges and subject to the restrictions specified in the resolution aforesaid.²⁹

1294. Amendment of Charters.

Any insurance company of this State may procure an amendment to its charter, in the same manner and subject to the same conditions and restrictions, as is provided in the preceding section of this act for the renewal of charters about to expire; but such amendments shall be in harmony with the original purposes of the corporation, and when approved by the Governor and recorded in the office of the Secretary of the Commonwealth, they shall be deemed and taken to form part of the charter of said company without letters patent, as in case of the creation or renewal of charters under this act: *Provided*, That this section shall not be so construed as to prevent any insurance company from extending by amendment to its charter, the territory in which it may insure property to any or all the counties of this Commonwealth.³⁰

Personal notice of a meeting to change the name of an insurance company by an amendment to its charter is not required by Secs. 30 and 31 of the Act of May 1, 1876.^{30*}

(29) Sec. 30, Act May 1, 1876, P. L., 53.

(30) Sec. 31, Act May 1, 1876, P. L., 53.

(30*) *International Savings & T. Co. v. Stenger*, 31 Pa. Super. Ct., 294 (1906).

Mutual Fire Insurance Companies May Accumulate a Re-insurance Fund.

It is lawful for mutual fire insurance companies heretofore organized, which by their charters are authorized to issue cash premiums and without premium notes, to accumulate the profit of their cash business, a re-insurance fund; but no mutual company aforesaid shall be deemed ineligible until the Insurance Commissioner require such company to make an assessment upon its mutual policy holders, so that there shall be premium notes in hand and subject to assessment amounting gross to three per centum of the entire amount of the company.³¹

Mutual Fire Insurance Companies Heretofore Incorporated May Create a Capital Stock.

Any mutual fire insurance company heretofore incorporated, which have accumulated, in the course of its business, not less than one thousand dollars over and above all liabilities, in excess of the cash reserve required by law on cash risks, and may create a capital stock may do so, with the assent of two-thirds interest of its policyholders, such interest to be determined by the amount of premiums paid or premium notes given, and a fund specially called for that purpose, of which at least thirty days previous notice shall have been given by publication in a newspaper of general circulation in the county in which the office of the company may be located, and also by written notice addressed and mailed to each policyholder; and with the consent of two-thirds of the policyholders is obligatory upon the company aforesaid, and due proof thereof made to the Insurance Commissioner, the directors of said company shall open books for the subscriptions to the stock of the company, and otherwise as is provided in this act for the organization of mutual fire insurance companies; but no share of stock shall be issued or a certificate issued therefor, unless the actual value thereof has been paid to the company in cash. The directors of said company shall have the first right to subscribe for said stock, subject to such equitable regulations as the act may prescribe, and the surplus of the mutual company shall be distributed, but shall remain intact as the surplus of

the joint-stock company, and the mutual policies, and all the rights and liabilities attached thereto, and all the powers and obligations of the company with reference to the same, shall survive so long as said policies remain in force, and when said policies shall have expired, said company shall be subject, in all respects, to the provisions of this act as originally organized under the same.³³

1297. Companies May Not Operate Both on Joint Stock and Mutual Plans.

Companies incorporated under this act must be organized upon the joint-stock or the mutual plan, and the power to insure upon both plans shall not exist in the same corporation except temporarily as provided in the preceding section of this act.³⁴

1298. Forfeiture of Charter for Neglect to Begin Business Within One Year.

If any corporation created under this act does not commence to issue policies within one year from the date of its letters patent, its corporate powers and existence shall cease.³⁵

1299. All Companies Subject to the Provisions of the Act of April 4, 1873.

All insurance companies heretofore or hereafter incorporated, except those especially exempt by the terms thereof, shall be subject to the provisions and requirements of the act, approved the fourth day of April, Anno Domini one thousand eight hundred and seventy-three, entitled "An act to establish an Insurance Department," and the several supplements thereto.³⁶

1300. Companies Insuring Lives on the Plan of Assessment Upon Surviving Members.

Companies insuring lives on the plan of assessments upon surviving members may be organized in the same manner as provided in this act for the organization of mutual fire insurance companies, and the provisions of the act to which this is a supplement shall not apply to said companies and companies heretofore organized, if their business is transacted in accordance with the provisions

(33) Sec. 33, Act May 1, 1876, P. L., 53.

(34) Sec. 34, Act May 1, 1876, P. L., 53.

(35) Sec. 35, Act May 1, 1876, P. L., 53.

(36) Sec. 36, Act May 1, 1876, P. L., 53.

pective charters, whether with or without capital stock, capital or accumulated reserve in lieu of capital *provided however*, That each of said companies shall be to exhibit an annual statement to the Insurance Department which shall be published in the annual report of the Insurance Commissioner, of the amount, if any of its capital stock, capital or accumulated reserve in lieu of capital stock; of all assets, assessments and liabilities, and to answer interrogatories as the Insurance Commissioner may require to ascertain its character and condition. For this purpose the Commissioner may at any time institute an examination of any such company, as is provided in the case of the insurance companies by the act to which this is a supplement. *Provided also*, That no part of such assessment upon members shall be applied to any other purpose than the payment of death losses, unless the amount intended for other purposes is specially stated in the notice of such assessment and the objects for which it is intended: *Provided further*, That policies or certificates issued by said companies shall state that the company issuing the same is not required by law to maintain a reserve which other life insurance companies are required to maintain by the act to which this is a supplement.³⁷

License Fee of Soliciting Agents.

Any soliciting agent appointed by any of the companies mentioned in the preceding section shall, before he enters upon his duties in any part of this State, and annually thereafter, pay the sum of five dollars for a license as such agent; said license fees to be levied by the several companies and paid to the State Treasurer annually.³⁸

Revocation of Charter—Power to Revoke.

Charters for incorporations named in this act may be terminated or limited in time, as the articles of agreement shall specify, and the general assembly reserves the power to revoke or annul any charter granted or accepted under this act, whenever in the opinion of the said general assembly it may be injurious to the public interest.

³⁷, Act May 1, 1876, P. L., 53.

³⁸, Act May 1, 1876, P. L., 53.

citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators or their successors.³⁹

1303. When Certificates of Foreign Insurance to Issue.

The certificates issued for the present year to insurance companies of other States and governments shall continue good until the thirty-first day of March, Anno Domini one thousand eight hundred and seventy-seven, unless sooner revoked by the Insurance Commissioner, and thereafter certificates shall be issued for the year beginning with the first day of April, and expiring on the thirty-first day of March succeeding.⁴⁰

1304. Certified Copies of Charter to Be Filed With Insurance Commissioner.

Every insurance company of this State, incorporated or organized after the fourth day of April, Anno Domini one thousand eight hundred and seventy-three, which has failed to file with the Insurance Commissioner a certified copy of its charter, shall file such copy within ninety days after the passage of this act, subject to like penalties as those imposed upon companies in existence at the time of the passage of this act to which this is a supplement; and every company hereafter organized shall file a copy of its charter with the Commissioner within ninety days from the date of said charter, and be subject to the provisions of the act to which this is a supplement.⁴¹

1305. Penalty on Agents of Foreign Companies for Transacting Business Without Authority.

Any person transacting business within this Commonwealth as the agent of an insurance company of any other State or government without a certificate of authority, as required by the act to which this is a supplement, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of five hundred dollars, but this section shall not be held to prevent the Insurance Commissioner from pursuing the remedy or remedies provided in the act aforesaid. The person or persons upon whose complaint such conviction is had shall receive one-half of the

(39) Sec. 39, Act May 1, 1876, P. L., 53.

(40) Sec. 41, Act May 1, 1876, P. L., 53.

(41) Sec. 42, Act May 1, 1876, P. L., 53.

provided the Insurance Commissioner or his deputy
 complainant.⁴²

of Foreign Insurance Companies When Personally

of any insurance company of any other State or gov-
 h does not comply with the laws of this Common-
 e personally liable on all contracts of insurance made
 him, directly or indirectly, for or in behalf of any
⁴³

Appointment of Receiver on Dissolution of Company.

insurance corporation is dissolved, as provided in the
 graph of the fifth section of the act to which this is a
 ne court or judge decreeing such dissolution may ap-
 per to take charge of its estate and effects, and collect
 property due and belonging to it, with power to
 defend suits in the name of the corporation or
 to do all other acts which might be done by such
 if in being, that are necessary for the final settlement
 shed business of the corporation. The powers of
 may continue as long as the court deems necessary
 poses, and he shall be held to supersede an assignee
 ny in possession.⁴⁴

Duty of Receiver—Duties.

Receiver shall give such security for the faithful per-
 his duties as the court may determine. He shall pay
 from the company, if the funds in his hands are suf-
 or, and if not he shall distribute the same ratably
 editors in the manner directed by any order or de-
 court. If there is a balance remaining after the pay-
 debts, the receiver shall distribute and pay it to and
 who are justly entitled thereto as having been stock-
 e company, or their legal representatives, and his

Act May 1, 1876, P. L., 53.

Act May 1, 1876, P. L., 53. It is immaterial that the
 insurance is not made in Pennsylvania. *Bartlett v. Rothschild*,
 906).

Act May 1, 1876, P. L., 53.

final account shall be subject to the approval of the court appointing him.⁴⁵

1309. Receivers to Report to Insurance Commissioner.

Receivers of insurance companies shall report to the Insurance Commissioner annually, in such form as the Commissioner may prescribe, and oftener in case he so directs, and such reports or abstracts thereof shall be incorporated into the annual report of the Commissioner to the Legislature.⁴⁶

1310. Appeal From Decree Dissolving or Continuing Company.

Within three months after the date of any decree either dissolving or continuing an insurance corporation, either party to the proceedings may take an appeal to the Supreme Court, which shall be heard and determined by said court as appeals in equity cases are now heard and determined. In case the appeal is taken by the company it shall give a bond or recognizance to the Commonwealth in such amount and with such sureties as may be determined and approved by the court or judge making such decree, conditioned that said company shall prosecute said appeal with effect, pay all costs that may be adjudged against them, and deliver over to the receiver duly appointed the assets of said company unimpaired in case a final decree be rendered against them.^{46*}

1311. Valuation by Commissioner of Insurance of Policies of Life Companies Transacting Business in Other States.

The Insurance Commissioner shall, at the request of any life insurance company of this State, cause a valuation to be made of the policies of the said company according to any standard in use in any State, in which the said company is transacting business or propose to transact business, and furnish said company with certificates of said valuation upon payment of the cost thereof as prescribed by the act to which this is a supplement; and in case the Insurance Commissioner or superintendent of any State shall refuse to accept the valuation of policies so made according to the standard of said State, it shall not be lawful for the Insurance Commissioner of this State to accept the valuations made accord-

(45) Sec. 50, Act May 1, 1876, P. L., 53.

(46) Sec. 51, Act May 1, 1876, P. L., 53.

(46*) Sec. 52, Act May 1, 1876, P. L., 53.

Pennsylvania standard by the Insurance Commissioner independent of the State thus refusing to accept as afore-companies of said State or States applying for authority in this State, but the Insurance Commissioner shall value the policies of companies of States so refusing to as required by the law of this State; and when by the State greater fees are charged the insurance companies of said State for authority to do business in said State than are by the law of this State to be paid by the companies of States authorized to do business herein, the Insurance Commissioner shall exact from the companies of said State the same fees for similar service which are exacted from the companies of Pennsylvania by the laws of the State afore-

Not to Apply to Certain Beneficial Associations.

and the act to which this is a supplement shall not apply to beneficial associations that provide aid for the family of a deceased member, whether issuing policies containing a certain sum of insurance or not, nor to associations issuing policies containing a guarantee sum of insurance.⁴⁸

Not to Apply to Certain Fire Associations.

Provisions of this act shall not be held to apply to any association in any city of this Commonwealth having a representative on its board of directors or trustees from the fire company of said city and whose business is restricted by law to the territory of said city.⁴⁹

Certificates of Assessments by Mutual Fire Companies to Be Prima Facie Evidence—Exceptions.

A certificate of any mutual fire insurance company, now existing or hereafter incorporated, signed by the president and countersigned by the secretary of such company, with the seal of such company attesting forth that an assessment has been made upon the note or notes of any member and the amount due by such member upon such note or notes, shall be *prima facie* evi-

⁵³, Act May 1, 1876, P. L., 53.

⁵⁴, Act May 1, 1876, P. L., 53.

⁵⁵, Act May 1, 1876, P. L., 53.

dence thereof in all the courts of this Commonwealth; but in all cases now pending or hereafter instituted in any of the courts of this Commonwealth, against any member of any such company in which such member has or may hereafter, within the time prescribed by law, file an affidavit setting forth that he, she or they has or have already paid his, her or their proportion of the loss for which the assessment was levied or that the assessment is for more money than is necessary to pay the losses and necessary expenses of said company, or that his, her or their signature or signatures was or were obtained by the practice of fraud, or false or fraudulent representations, such certificate shall cease to be evidence of anything whatever, and said company shall be compelled to prove its claim as other claimants do; and all acts or parts of acts or charters or parts of charters inconsistent herewith are to such extent repealed.⁵⁰

1315. Repeal.

So much of any act of assembly as provides for the incorporation of the insurance companies whose incorporation is provided for by this act or for the alteration and amendment of the charters of the same, and all acts or parts of acts inconsistent herewith be and the same are hereby repealed.⁵¹

1316. Reports to Insurance Commissioner.⁵²

MUTUAL ASSESSMENT LIFE AND ACCIDENT INSURANCE COMPANIES.

1317. Incorporation Authorized.

Companies may be incorporated to insure lives on the assessment plan, or to insure against personal injury resulting from accident, in the manner and form set forth in the act to which this is supplementary: *Provided*, No letters patent shall be issued by the Governor to any company organized to insure lives, until the Insurance Commissioner shall certify to him that the company, seeking to become incorporated has secured applications for not less than five hundred thousand dollars insurance, by not less than two hundred persons, and that two per centum of the insurance applied for has been deposited in bank to the credit of

(50) Sec. 56, Act May 1, 1876, P. L., 53.

(51) Sec. 57, Act May 1, 1876, P. L., 53.

(52) See Sec. 1327.

any fund of the proposed corporation, and that satisfactions have been given to the Commissioner that such fund shall not be used for any other purpose than the paying of claims. In case the purpose of the company is to insure against fire, it shall be entitled to receive letters patent from the Government if it has secured applications for not less than one hundred and fifty dollars of insurance, by not less than one hundred and fifty dollars and otherwise complied with the terms and conditions provided with regard to life companies: *Provided*, That no person shall be refused admission to any company or association chartered or doing business as an assessment company under the laws of the Commonwealth, the Insurance Department is authorized to prohibit all assessment accident companies from such business in the State of Pennsylvania.⁵³

Reports to Insurance Commissioner.

It is the duty of every corporation, organized under this Act, to file an annual statement to the Insurance Commissioner, on or before the first day of March, in such form as the Commissioner may prescribe, showing its condition and business for the year ending on the preceding thirty-first day of December, which statement shall be signed by the president and secretary, and attested by the respective oaths or affirmations, and upon filing the same, the corporation shall pay to the Commissioner the sum of twenty dollars. Any corporation which shall fail to make the said report, for a period of one year from the time herein prescribed, shall be deemed to be doing business unlawfully, and its corporate powers shall cease, and in case evidence is furnished the Insurance Commissioner it is conducting its business fraudulently, in non-compliance with the law applicable to the same, or is not performing its contracts with members in good faith, then it shall be the duty of the Insurance Commissioner to communicate the same to the Attorney General, who shall, thereupon, commence a legal proceeding against such corporation, company or association, to remove its officers, to show cause why its officers should not be removed, to close the business, and the court, or judge, as the case may be, shall, upon, hear the allegations and proofs of the respective parties, and if it shall appear to the satisfaction of the said judge

⁵³ Act of June 3, 1887, P. L., 335, amending Sec. 1, Act of June 3, 1887, P. L., 80.

or court that the officers of such corporation, company or association, or any one or more of them, have been guilty of any irregularity in violation of the law to the injury of such company, the said judge or court shall decree a removal from office of the guilty party or parties, and substitute suitable persons to serve until the regular annual election, or until a successor is regularly chosen, or if it shall appear to the said judge or court that the interests of the public so require, the said judge or court shall decree a dissolution of such corporation, company or association, and a distribution of its effects.⁵⁴

1319. Policies Must Be Supported by an Insurable Interest.

A policy or certificate issued by any corporation or association amenable to this act, when the payments thereon are made by any person other than the insured, to be valid, must be supported by an insurable interest, and shall be invalid when the beneficiary or assignee thereof is solely and only interested in the death of the insured.⁵⁵

1320. Guarantee Fund.

All companies for the insurance of life on the assessment plan, incorporated under the act to which this is supplementary, may have a guarantee fund, if approved by a majority of the directors, for a sum not exceeding two hundred thousand dollars, subject to the provisions, requirements and regulations prescribed in sections twenty-three and twenty-four of the said act.⁵⁶

1321. Business Prohibited Unless Annual Statement is Filed.

Any association or society incorporated under the act to which this is supplementary that shall have failed, for more than one year previous to the passage of this act, to make the annual statement to the Insurance Commissioner required by the thirty-seventh section of the said act, shall be deemed to be doing business unlawfully, and its corporate powers and existence shall cease; and hereafter every corporation or association amenable to this act shall make its statement annually before the first day of March, and upon filing the same shall pay to the Commissioner

(54) Sec. 2, Act of June 3, 1887, P. L., 335.

(55) Sec. 2, Act June 5, 1883, P. L., 80.

(56) Sec. 3, Act June 5, 1883, P. L., 80.

twenty dollars. And when the officers and ten members of such corporation shall request the Commissioner to institute an examination into its affairs, for the purpose of verifying its statement and ascertaining its true character and condition, the expenses of such examination shall be borne by the corporation making such request.⁵⁷

Power of Insurance Commissioner When Company Fails to Make Annual Report.

If any such corporation or association shall fail to make an annual statement to the Insurance Commissioner before the first of January, or if approved evidence is furnished the Insurance Commissioner that it is conducting its business fraudulently, or not in accordance with the law applicable to the same, or is not carrying on its business with members in good faith, then it shall be the duty of the Insurance Commissioner to communicate the fact to the Attorney General, who shall, thereupon, commence proceedings against such corporation, company or association, requiring a statement of cause why its officers should not be removed, or its business should not be dissolved, and the court or judge, as the case may be, shall hear the allegations and proofs of the respective parties. If it shall appear to the satisfaction of the said judge or court that the officers of such corporation, company or association, or one or more of them, have been guilty of any irregularity or violation of the law to the injury of such company, the court or judge shall decree a removal from office of the guilty officers, and substitute suitable persons to serve until the next annual election, or until a successor is regularly chosen, or shall appear to the said judge or court that the interests of the public require the said judge or court shall decree a dissolution of such corporation, company or association, and a distribution of its assets and effects.⁵⁸

Chapter 10. — Act Applies to All Assessment Companies Except Societies Insuring Business Through the Lodge System.

This chapter shall be applicable to all corporations, companies, associations or co-partnerships insuring lives on the assessment plan: provided, That charitable, benevolent or beneficial societies

⁵⁷ Act June 5, 1883, P. L., 80.

⁵⁸ Act June 5, 1883, P. L., 80.

cieties providing benefits for members, or relief to sick or disabled members, or for the burial of deceased members as provided in their charters, and fraternal societies organized for the payment of benefits to the families, heirs or dependents of deceased members thereof, and doing business through the lodge system, who do not employ agents except for instituting lodges, shall not be amenable to the provisions of this act, and the act to which this is supplementary.⁵⁹

1324. Foreign Assessment Companies to Be Licensed.

Any corporation or association organized under the laws of any other State or government to insure lives on the assessment plan, or any corporation carrying on the business of life or accident insurance on the assessment plan, shall be licensed by the Insurance Commissioner upon the payment to him of a fee of twenty-five dollars annually, to do business in the State: *Provided*, Such corporation or association shall first deposit with the Commissioner a certified copy of its charter, or articles of incorporation, a copy of its statement of business for the preceding year, sworn to by the president and secretary, or like officers, showing a detailed account of the expenditures and income, the amount of insurance in force, its assets and liabilities in detail, and a certificate sworn to by the president and secretary, or like officers, setting forth that it has paid and has ability to pay its policies or certificates to the full limit named therein, a certificate from the Insurance Commissioner or from a judge or clerk of a court of record of its home State, certifying that corporations or associations insuring lives on the assessment plan, and paying policies in full, or providing accident indemnity, and chartered under the laws of this State, are legally entitled to do business in its home State, a copy of its policy or certificate of membership, application and by-laws, which must show that death losses are, in the main, provided for by assessment upon surviving members, and it shall legally designate a person or agent residing in this State to receive service of process for said company, or in default of such designation, service of process may be made upon the Insurance Commissioner of this State, who shall be deemed its attorney for that purpose, and he shall immediately notify any corporation or association thus served. Upon complying with

(59) Sec. 6, Act June 5, 1883, P. L., 80.

provisions of this section, the Commissioner of Insurance shall issue to the corporation or association so complying, a certificate of authority to do business in this State. After any corporation or association shall have been licensed to do business in this State, it shall make, annually, to the Insurance Commissioner, under oath, before the first day of March, of each year, a statement such as is required from like companies organized in this State, and answer such interrogatories as the Insurance Commissioner, who shall furnish a blank form for the purpose, shall make, in order to ascertain its financial character and condition, and shall pay, upon filing each annual statement, the fee of ten dollars. And in the event of its failure to make such statement, on or before the first day of March of each year, the Insurance Commissioner shall revoke its license, and thereafter, until a statement is made, it shall be deemed to be doing business unlawfully in this State. When the Commissioner of this State has reasonable cause to doubt the solvency of any such foreign corporation or association, he shall accept a certificate from the Insurance Commissioner or like officer of the State under which it was organized, as a sufficient proof of its solvency. And when, in the Commissioner's opinion, such corporation, company or association is conducting its business fraudulently, or is failing to carry out its contracts with members in good faith, he shall report the same to the Attorney General, who shall thereupon commence proceedings against such corporation, company or association, requiring it to show cause why its license to do business in this State should not be revoked. And any such foreign corporation, company, association or society now doing business in this State which shall refuse or neglect to comply with the provisions of this section after the space of ninety days after its passage, shall be deemed and held to be doing business unlawfully. And if any officer or employee of any such corporation or association shall fail to do business in this State, or assist in or knowingly permit such corporation or association to fail to comply with the provisions of the laws of this State applicable to the same, he shall be deemed and held guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars, or less than fifty dollars, or imprisoned in the county jail for not more than ninety days, or less than thirty, or both: *Provided*, that fraternal societies as designated in section six of this chapter, and under the laws of any other State, securing mem-

bers through the lodge system, who do not employ agents except for instituting lodges, doing business in this State, shall not be amenable to the provisions of this act, nor be required to pay the fees and make the annual statements to the Insurance Commissioner required by this act, or the act to which this is a supplement.⁶⁰

The mailing of letters and circulars in another State, addressed to persons in Pennsylvania by an agent, officer or employe of a foreign insurance company, constitutes a doing of business in this Commonwealth within the meaning of Sec. 7 of the Act of June 5, 1883, if they constitute a part of the work necessary for effecting the objects of the company.^{60*}

FOREIGN INSURANCE COMPANIES.

1325. Agents Not to Act Without Certificate of Authority.

No person shall act as agent or solicitor in this State of any insurance company of another State, or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association, by the Commissioner, a certificate of authority, showing that the company or association is authorized to transact business in this State; and it shall be the duty of every such company or association authorized to transact business in this State, to make report to the Commissioner in the month of January of each year, under oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association in this State, during the year or fraction of a year ending with the thirty-first day of December preceding, whether said premiums were received in money or in the form of notes, credits or any other substitute for money, and pay into the State treasury a tax of three per centum upon said premiums; and the Commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the State treasury.⁶¹

(60) Sec. 7, Act June 5, 1883, P. L., 80.

(60*) Com. v. Long, 1 Pa. C. C., 190 (1885).

(61) Sec. 10, Act April 4, 1873, P. L., 20. See Sec. 1303.

Companies to Certify Names of Agents to Insurance Commissioner.

Companies to which certificates of authority are issued, as provided in the preceding section, shall, from time to time, certify to the Commissioner the names of the agents appointed by them to do business in this State; and no such agent shall transact business until he has procured from the Commissioner a certificate that the company has complied with the requirements of the law, and that the person named in said certificate has been duly appointed its agent.⁶²

Companies to Make Reports to Insurance Commissioner.

Every insurance company, including individuals, partnerships, associations and corporations conducting any branch of insurance business in this State, must transmit to the Insurance Commissioner a statement of its condition and business, for filing on the preceding thirty-first day of December, and a statement shall be rendered on the first day of January following, within sixty days thereafter, except that foreign companies shall transmit their statement of business, other than that done in the United States, prior to the following first day of July following, within sixty days thereafter, which statements must be true and state the particulars required by the blanks provided by the Commissioner; and the Insurance Commissioner may, at any time, demand statements from any company doing business within the State, or from any of its officers or agents, on oath, as he deems necessary and proper to elicit a full exposure of its business and standing, all of which statements herein required must be verified by the signatures and oaths of the president or president-elect, with those of the secretary or actuary. Any company, having neglected to file a statement required of it within the time and manner prescribed, shall do any new business only on notification by the Insurance Commissioner, while such neglect continues; and any company or association neglecting to transmit any statement required shall forfeit one hundred dollars for each day's neglect: *Provided*, That any foreign insurance company, doing business in this Commonwealth, may, at its option, include in its statements to the Insurance Commissioner its foreign business and assets, but shall be required

to return only the business done in the United States and the assets held by and for it within the United States for the protection of policy-holders therein.⁶³

1328. Service of Process on Foreign Insurance Companies.⁶⁴

1329. Penalty for Transacting Business in the State Without Authority—"Licensed Excess Insurance Brokers."

Any insurance company or association not of this Commonwealth, doing business within this Commonwealth without authority agreeably to the provisions of this act, shall forfeit and pay to the Commonwealth the sum of five hundred dollars for each month, or fraction thereof, during each month, on and after the passage of this act, in which such illegal business was transacted, and be prohibited from doing business in this Commonwealth until such fines are fully paid. And that any person or persons, or any agent, officer, or members of any insurance firm or corporation, within this Commonwealth, paying or receiving or forwarding any premiums, applications for insurance, or in any manner securing, helping, or aiding in the placing of any insurance, or effecting any contracts of insurance, upon property within this Commonwealth, directly or indirectly, with any insurance company, association, or person not of this Commonwealth, and which has not been authorized to do business in this Commonwealth, for any other than himself, except as hereinafter provided, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than three hundred dollars nor more than one thousand dollars, and, upon conviction of a second offense, shall be sentenced to pay a like fine and undergo an imprisonment, not exceeding one year, or either or both, at the discretion of the court: *Provided, however,* That the Insurance Commissioner may, in consideration of a yearly payment of one hundred dollars, for the use of the Commonwealth, issue a license, revocable at any time, permitting the person, firm, or corporation named in such license to act as a broker to procure policies of fire insurance from corporations, persons, partnerships, and associations which are not authorized to do business in this Commonwealth. Before any in-

(63) Act of June 23, 1885, P. L., 134, amending Sec. 12, Act of April 4, 1873, P. L., 20.

(64) See Sec. 603.

be procured under or by virtue of said license, there-
 stated and filed with the Insurance Commissioner by the
 er, and also by the party desiring the insurance, an-
 ng forth that the person desiring insurance is, after
 t, unable to procure the amount required to protect
 owned or controlled, or entrusted to him, from insur-
 ations,—mutual insurance corporations or associa-
 d,—duly authorized to transact business in this Com-
 The licensed broker procuring or delivering policies
 thORIZED corporations, or with persons, partnerships,
 ons, shall keep a separate account thereof, open at all
 ut notice, to the inspection of the Insurance Commis-
 ng the exact amount of such insurance placed, giving
 the insured, the location of the insured property, the
 m mentioned in the policy, the name of the persons,
 partnership, or association issuing the contract, the
 e policy, the date of the policy and the term thereof.
 shall have written or printed on the outside of it the
 icensed broker who obtained the same and introduced
 ommonwealth, and after his name and address shall
 words "Licensed Excess Insurance Broker." ⁶⁵

of "Licensed Excess Insurance Brokers."

y receiving such license shall, before transacting any
 reunder, execute and deliver to the Insurance Com-
 pond in the penal sum of one thousand dollars, with
 as the Commissioner may approve, conditioned that
 will faithfully comply with all requirements of this
 pay to the Insurance Commissioner, for the use of
 wealth, in January and July of each year, a tax of
 utum upon the gross premiums named in the policies
 o the policyholders and upon all policies pro-
 n, in accordance with this act, during the preceding
 and in default of payment of the tax, as herein pro-
 e the thirtieth day of January and July of each year,
 ce Commissioner shall demand a statement, under
 ne broker; and, failing to obtain the same, it shall be
 roceed against him, in the same manner as though he

June 7, 1907, P. L., 434, amending Act of April 26, 1887,
 h amended Sec. 14, Act April 4, 1873, P. L., 20.

had acted without any license from the Insurance Commissioner. All insurance policies issued to residents of this Commonwealth, by companies that have not complied with the insurance laws of this Commonwealth, shall be void, except such as shall have been procured as herein set forth.⁶⁶

1331. What Capital Foreign Fire and Marine Companies Are Required to Have.

No fire, marine, or fire and marine insurance company, incorporated by any other State or government, shall be authorized to transact business in this State, unless it has a capital stock paid in and safely invested of at least two hundred thousand dollars, which has not been impaired to a greater extent than that permitted to companies of this State under the act to which this is a supplement, or having a capital stock less than two hundred thousand dollars and not less than one hundred thousand dollars, has a surplus on hand, making the aggregate of its assets safely invested at least two hundred thousand dollars over and above all liabilities: *Provided*, That this section shall not apply to companies of other States now authorized to do business in this Commonwealth, until five years from and after the approval of this act, so long as said companies continue solvent and comply with existing laws: *Provided*, That any company with a capital paid in exceeding two hundred thousand dollars may be admitted so long as its unimpaired capital does not fall below said amount.^{66*}

1332. Health Insurance Companies—How Formed.

Any ten or more persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act, and form an incorporated company for the purpose of making insurance, either upon the stock or mutual principle, upon the health of individuals, and against personal injury or disablement, and against death, resulting from natural or accidental causes: *Provided*, That such corporations shall not issue policies agreeing to pay more than ten dollars per week in the event of sickness, accident or disablement, nor more than two hundred and fifty dollars in event of death.⁶⁷

(66) Act June 7, 1907, P. L., 434.

(66*) Sec. 40, Act of May 1, 1876, P. L., 53.

(67) Sec. 1, Act April 28, 1903, P. L., 329.

sons shall associate themselves together, and the company shall be formed and incorporated, in the manner provided by the laws of the State of New York, and shall be authorized to transact the business of insurance in the same manner and on the same conditions as insurance companies are by law authorized to do, in so far as such laws are not inconsistent with the provisions of this act.⁶⁸

Capital Stock.

The capital stock of a joint-stock company, organized under the laws of the State of New York, shall be not less than twenty-five thousand dollars, and shall be divided into shares of not less than ten dollars each, payable in lawful money, ten per centum on each share at the time of subscribing, and the balance at such time as the company may direct, not exceeding one year from the date of subscription; and the company may provide such rules, subject to the forfeiture of partial payments on subscriptions, as it may deem advisable; which rules shall be binding upon the subscribers, provided they are made known at the time of sub-

Annual Meetings—Elections of Board of Directors—Vacancies in Board.

The annual meeting for the election of directors shall be held in the month of January as the by-laws of the company may direct, and such notice of the time and place of meeting shall be given to the stockholders or members as may be provided by the by-laws; and at such annual meeting the stockholders shall elect, by ballot, not less than five nor more than the number of directors, to serve for one year, and until their successors are chosen: *Provided*, That at any annual meeting of the company the stockholders or members it may and shall be lawful to divide the directors which are to be chosen, into two, three or four classes, so that the first class shall serve for the term of one year, and the second, third and fourth to serve two, three and four years, respectively; and at all ensuing elections of said company the stockholders shall only elect the number of directors necessary to fill the place of those whose terms of office shall then expire, and such directors shall be elected for the longest term for

⁶², Act April 28, 1903, P. L., 329.

⁶³, Act April 28, 1903, P. L., 329.

which any class may have been elected, as hereinbefore provided. And in case a vacancy or vacancies shall happen in the number of said directors, the board of directors shall choose and elect a proper person, or proper persons, to fill such vacancy or vacancies during the remainder of the term or terms for which the person or persons, in whose place or places such vacancy or vacancies shall have happened, shall have been elected.⁷⁰

1335. When Mutual Companies May Begin Business—Deposit to Be Made With Insurance Commissioner.

Any mutual company, organized under the provisions of this act, shall be authorized to do the business of insurance when it shall have received, from not less than five hundred persons, applications for insurance against death amounting to not less than fifty thousand dollars, upon which applications one-twelfth of the annual premium shall have been paid: *Provided*, That no such company shall be authorized to do the business of insurance until it shall have deposited with the Insurance Commissioner the sum of five thousand dollars in cash or approved securities; which sum the Insurance Commissioner is hereby authorized and empowered to receive, and it shall be his duty to hold the same for the benefit of the members of such corporation and its creditors, preference being given thereto in the following order, to-wit: First, claims under policies; second, salaries of employees; third, general creditors.⁷¹

1336. Corporations Formed for "The Maintenance of a Society for Beneficial or Protective Purposes," etc., May Reincorporate.

Any corporation now formed or organized under the provisions of the ninth paragraph, section two, of the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, namely: "The maintenance of a society for beneficial or protective purposes to its members, from funds collected therein," except fraternal, benevolent, charitable or secret societies, issuing beneficial certificates, and paying benefits to their membership through the lodge system, and insurance or relief associations formed by or for the exclusive benefit of employees of

(70) Sec. 4, Act April 28, 1903, P. L., 329.

(71) Sec. 5, Act April 28, 1903, P. L., 329.

or firms, or formed by or for the exclusive benefit of any religious corporation or association, may be re- under the provisions of this act in the following man- ing of the members of such corporation shall be held, jority shall vote in favor of the proposed reincorpora- tion to that effect shall be adopted, and upon the re- such resolution in the office for the recording of deeds, the county where such corporation has its principal ll be lawful for the directors of such corporation to ticles of association, as herein provided for the incor- new corporations; upon which articles the same pro- ll be had as upon an original application for incorpora- his act. And from and after the approval of said ar- corporation shall be and become a corporation under this

insurance company organized upon the joint-stock plan gin business until its capital has been paid in full. rance Companies, 28 Pa. C. C., 599 (1903).

, Act April 28, 1903, P. L., 329.

CHAPTER LVI.

IRON AND STEEL COMPANIES.

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| 1337. Incorporation Authorized. | Purposes Named in this Section. |
| 1338. Powers of Such Companies. | |
| 1339. Right to Increase Capital Stock, Hold Real Estate, Mine, etc. | 1344. Other Corporations May Hold Their Stock and Bonds, and They May Hold the Stock and Bonds of Other Corporations. |
| 1340. May Issue and Dispose of Bonds. | 1345. How Stock May be Held—Offices—Acceptance of this Act. |
| 1341. Annual Statement to be Laid Before Stockholders. | 1346. Individual Liability of Stockholders. |
| 1342. Power to appropriate Streams. | 1347. Repealing Clause. |
| 1343. Effect of Incorporation for | |

1337. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XVII. The manufacture of iron or steel, or both, or of any other metal, or of any article of commerce from metal or wood, or both, and the manufacture and production of silverware, plated ware, jewelry, works of ornament and art, and pictures, and the buying and selling of such articles.¹

1338. Powers of Such Companies.

Companies incorporated under the provisions of this act for the

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Act of June 3, 1893, P. L., 287, amending Sec. 2, Act April 29, 1874. This amendment to Clause XVII, of the Second part of Sec. 2, Act of April 29, 1874, was not carried out, as to the production of silverware, plated ware, jewelry, etc., by a corresponding amendment to Sec. 38, and accordingly Sec. 38, does not apply to corporations formed for such production. Section 38 is taken, with modifications, from the Iron and Steel Manufacturing Companies Act of March 21, 1873, P. L., 28. Corporations for so many different purposes may be formed under the provisions of the foregoing paragraph that no attempt is here made to give forms for statements of purposes in charters. The practitioner is referred to the biennial lists of corporations formed under the Act of 1874, published by the Secretary of the Commonwealth, for statements of purpose of corporations so formed.

of iron or steel, or both, of any other metal or of any commerce from wood or metal or both, unless otherwise in this act, shall, from the date of the letters patent created, have the powers and be governed, managed and controlled as follows:—²

to Increase Capital Stock, Hold Real Estate, Mine,

a corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five millions of dollars, and shall have the right to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, and prepare for market, or for their own use and consumption, coal iron ore and other minerals, and to erect and maintain furnaces, forges, mills, foundries, manufactories and other improvements and erections as they may deem necessary to manufacture iron and steel, or any other metal, or to use the same in all shapes and forms, and either of these metals or in combination with other metals, or with wood, to export all of said articles or any of them to market, and to do the same and to do all such other acts and things as may be necessary for the prosecution of said business may be deemed necessary. They shall not at any one time have more than 10,000 acres of land in this Commonwealth, including leased lands, except lands owned by companies organized to manufacture iron with charcoal, and said companies may hold timber lands not exceeding 10,000 acres that will be required to furnish wood for charcoal uses of said companies, and said lands may be located in any one or more of the four contiguous counties.³

Issue and Dispose of Bonds.

Such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum annum, and sell, exchange or otherwise dispose of the same on such terms and conditions as they may deem advisable, and the interest thereon, may be secured by a mortgage upon the corporate franchises, real and personal property.

² Act April 29, 1874, P. L., 99.

³ Sec. 38, Act April 29, 1874, P. L., 99, as amended by the Act of April 24, 1887, P. L., 188. See Sec. 243.

lease-hold estate: *Provided*, They shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.⁴

1341. Annual Statement to Be Laid Before Stockholders.

The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year; and it shall also be their duty to make report to the Auditor General, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the Commonwealth, and such report shall be verified by the oaths or affirmations of the president and treasurer of such corporation; and any such corporation which shall neglect or refuse to report to the Auditor General, according to law, shall be liable to a penalty of five hundred dollars for the use of the Commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.⁵

1342. Power to Appropriate Streams.

It shall and may be lawful for any corporation organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, flowing through or along or rising upon any lands belonging to and owned by such corporation in the vicinity of their works, for the purpose of supplying the same with stream or water power, upon the said corporation filing in the office of the prothonotary of the Court of Common Pleas of the county in which such works may be located, a draft or drafts showing the stream or streams, spring or springs which may have been appropriated, for the purposes aforesaid; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs thus appropriated, so as to diminish the usual accustomed and natural flow thereof: *Provided*, That every corporation thus appropriating any stream or streams, spring or springs shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of

(4) Clause 2, Sec. 38, Act April 29, 1874, P. L., 99.

(5) Clause 3, Sec. 38, Act April 29, 1874, P. L., 99.

streams, spring or springs, have heretofore been
low off or along the lands of such corporations.⁶

Incorporation for Purposes Named in This Section.

ation of any association of persons for the pur-
this section shall be held and taken to be of the
and effect as if the powers and privileges con-
duties enjoined had been conferred and enjoined
of the Legislature, and the franchises granted shall
according to the same rules of law and equity as if
ated by special charter, and no modification or re-
shall affect any franchises obtained under the pro-
ame.⁷

**Corporations May Hold Their Stock and Bonds and
May Hold the Stock and Bonds of Other Corporations.**

may be lawful for any incorporated company of
wealth, or elsewhere, to subscribe for and take shares
y company incorporated for the purposes named in
irty-eight of the said "corporation act of one thou-
dred and seventy-four," or to purchase the bonds
uch company or guarantee the payment of said
interest thereon, or either principal or interest; and
ay be lawful for any manufacturing company of
wealth incorporated for the purposes named in said
eight of the said corporation act of one thousand
and seventy-four to subscribe for, purchase, hold
bonds or stocks in any incorporated company of
wealth or elsewhere, or to guarantee the payment of
d the interest thereon, or either principal or interest:
t this act shall not be construed to permit any cor-
d herein to hold a majority of the stock of any rail-
or other common carrier.⁸

Stock May Be Held—Offices—Acceptance of This Act.

of the stock of any such corporation may be held

Sec. 38, Act April 29, 1874, P. L., 100.

Sec. 38, Act April 29, 1874, P. L., 100.

ct of June 17, 1887, P. L., 411, amending Clause 6, Sec. 38,
1874, P. L., 100.

by persons who are not citizens of this State or of the United States. A majority of its directors may be citizens of another State, or of any foreign country; and it may have an office at any place without the State, at which the by-laws of the corporation may authorize the same meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this State is transacted, and an officer of the company there, upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this Commonwealth. Corporations for any of the purposes named in this section, heretofore created by any general or special law of this Commonwealth, on accepting the provisions of the Constitution, shall be entitled to all the privileges and powers conferred by this act upon such corporations to be hereafter created.⁹

1346. Individual Liability of Stockholders.

The stockholders of every company incorporated for the purposes named in this section, shall only be individually liable for debts due to laborers, mechanics or clerks, for services, and in that case for no period exceeding six months.¹⁰

1347. Repealing Clause.

All laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions hereof, or the stockholders of any such company: *Provided*, This shall not apply to laws imposing taxes upon such corporations.¹¹

(9) Clause 7, Sec. 38, Act April 29, 1874, P. L., 100.

(10) Clause 8, Sec. 38, Act April 29, 1874, P. L., 101.

(11) Clause 9, Sec. 38, Act April 29, 1874, P. L., 101.

CHAPTER LVII.

ING, MINING, MECHANICAL AND QUARRYING COMPANIES.¹

- ation Authorized.
- and Government.
- Stock.
- ymment of Subscrip-
- ed.
- ng of Certificate of
- Capital Stock.
- wal of Capital.
- s Individually Li-
- aring Dividends.
- on of Indebted-
- o Hold Real and
- ate.
- 1358. Annual Certificates to be Filed With Recorders of Deeds.
- 1359. Remedy in Case of Failure to File Certificate.
- 1360. Service of Process—Disso- lution—Liability of General Stockholders.
- 1361. Individual Liability of Stockholders for Claims of Laborers.
- 1362. Power to Acquire and Dis- pose of Real Estate.
- 1363. Pollution of Streams by Mining Companies.
- 1364. Eminent Domain.

y.
relative to manufacturing corporations, prior to the
29, 1874, see Sec. 9 and note thereto.

orporation Authorized.

ns may be formed under the provisions of this act
r . . . XVIII. The carrying on of any me-
ing, quarrying or manufacturing business including
es covered by the provisions of the acts of the gen-
entitled "An act to encourage manufacturing opera-
Commonwealth," approved April seventh, one thou-
ndred and forty-nine, entitled "An act relating to
for mechanical, manufacturing, mining and quarry-
' approved July eighteenth, one thousand eight hun-

pril 18, 1863, P. L., 1864, 1102, providing for the incorpora-
cal, manufacturing, mining, and quarrying companies is re-
it provided for the incorporation of corporations for any
provided by the Act of April 29, 1874, *Luzier et al. v.*
Twine Co., 8 D. R., 632 (1899). See Sec. 1854.

dred and sixty-three, and the several supplements to each of the said acts, including the incorporation of grain elevators, storage house and storage yard companies. . . .^{1*}

1350. Powers and Government.

Companies incorporated under the provisions of this act for the carrying on of any mechanical, mining, quarrying, manufacturing or other business, as provided in clause eighteen of the second class, in section two hereof, when not otherwise provided in this act, shall, from the date of the letters patent creating the same, have the powers and be governed, managed and controlled as follows:²

1351. Capital Stock.

Every such corporation may have a capital stock not exceeding five million dollars, and may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely: General stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half yearly sum or dividend to be expressed in the certificates, not exceeding four per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.³

1352. How Payment of Subscriptions Enforced.

If the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon. The treasurer shall give notice of the time and place appointed

(1*) Sec. 1, Act February 29, 1874, P. L., 73, and Clause XVII., of Part 2, Sec. 2, Act April 29, 1874, as amended by Act of July 9, 1901, P. L., 624. For reasons stated in the note to Section 1337, no attempt is here made to give forms of statements of purposes for the innumerable kinds of corporations which may be formed under this paragraph.

(2) Sec. 39, Act April 29, 1874, P. L., 101.

(3) Clause 1, Sec. 39, Act April 29, 1874, P. L., 101. See Sec. 243.

sale, and of the sum on each share, by advertising the same three weeks successively before the sale in some newspaper published in said county; and a deed of the share so sold made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, who shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.⁴

Recording of Certificate of Payment of Capital Stock.

The president and directors, with the treasurer and clerk of the company, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the stock so fixed and paid in, which certificate shall be signed and returned to by the president, treasurer, clerk and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.⁵

Withdrawal of Capital.

When any part of the capital stock of a company is withdrawn and returned to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the certificate for that purpose in the office of the recorder of deeds, as provided in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of the debts.⁶

When Directors Individually Liable for Declaring Dividends.

When the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, as they respectively continue in office: *Provided*, That the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and their objections in writing with the clerk of the company, they shall be exempted from such liability.⁷

Section 2, Sec. 39, Act April 29, 1874, P. L., 101.

Section 3, Sec. 39, Act April 29, 1874, P. L., 101.

Section 4, Sec. 39, Act April 29, 1874, P. L., 102.

Section 5, Sec. 39, Act of April 29, 1874, P. L., 102. See Sec. 191.

1356. Restriction of Indebtedness.

The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock paid in, unless such debt be for unpaid purchase money for lands bought, which debt shall only be a lien upon and collectible from said land; and in case of any excess, the directors, under whose administration it occurs, shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: *Provided*, That any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose. If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.⁸

A court of equity is the proper tribunal for adjudicating claims arising under this provision.⁹

Secs. 41 and 42 of the Act of July 18, 1863, regulating the method of procedure against directors in such cases are still in force and persons proceeding against such officers of companies formed under the Act of 1874, agreeably to Cl. 6, Sec. 39, must comply with the provisions of said sections.¹⁰

The limitation of indebtedness to the amount of the capital stock paid in as contemplated by the statute, does not include all available assets of a corporation, but applies only to the fund designated in the charter, contributed by the stockholders for the prosecution of the business of the corporation, and the debts of the corporation are obligations arising *ex contractu* only, and do not include demands in tort or unliquidated claims for breach of contract until reduced to judgment.¹¹

(8) Clause 6, Sec. 39, Act April 29, 1874, P. L., 102. See Sec. 213.

(9) *Megargee & Green Co. v. Ziegler*, 9 Pa. Super. Ct., 438 (1899).

(10) *Wagner et al. v. Corcoran et al.*, 2 D. R., 440 (1893).

(11) *Morimura, Arai & Co. et al. v. Traeger et al.*, 11 D. R., 378 (1901).

cause evidently does not refer to bonded indebtedness, in-
 of which can be authorized by the stockholders only, but
 such indebtedness as may be incurred by the directors in
 action of the business of the corporation. Since the pas-
 the Act of February 9, 1901, P. L., 3, and the amendment
 of April 22, 1905, P. L., 280,¹² therefore, the bonded in-
 ss of a manufacturing, mining, mechanical or quarrying
 may be increased without regard to the amount of its
 stock.¹³

Power to Hold Real and Personal Estate.

corporation may, in its corporate name, take, hold and
 such real and personal estate as is necessary for the pur-
 its organization, may carry on its business, or so much
 is convenient, beyond the limits of the Commonwealth,
 there hold any real or personal estate necessary for con-
 the same.¹⁴

Annual Certificates to Be Filed With Recorders of Deeds.

such corporation shall, annually, in September, make,
 president, treasurer and a majority of the directors, shall
 ear to and deposit with the recorder of deeds for said
 a certificate stating the amount of capital stock paid in,
 es and number of shares held by each stockholder, the
 invested in real estate and in personal estate, the amount
 erty owned and debts due to the corporation, on the first
 August next preceding the date of such certificates, and
 ant, as nearly as can be ascertained, of existing demands
 he corporation at the date of the certificate.¹⁵

Remedy in Case of Failure to File Certificate.

the officers of such corporation have failed to perform
 s prescribed in this act, as to making certificates, the cer-
 therein mentioned may be made and filed at any time

Sec. 246.

Sec. 355.

ause 7, Sec. 39, Act April 29, 1874, P. L., 102. See Sec. 1362.

ause 8, Sec. 39, Act April 29, 1874, P. L., 102. This requirement is
 e because of the absence of a penalty for non-compliance there-
 Sec. 190, supra.

after such failure; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.¹⁶

1360. Service of Process—Dissolution—Liability of General Stockholder.

Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations. The Court of Common Pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations. When special stock is created by any corporation under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.¹⁷

1361. Individual Liability of Stockholders for Claims of Laborers.

The stockholders of any and all corporations under this act, shall be personally liable for all sums of money due to laborers, clerks and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment; and when judgment is obtained against any corporation for wages or labor due to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.¹⁸

1362. Power to Acquire and Dispose of Real Estate, Etc.

Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper

(16) Clause 9, Sec. 39, Act April 29, 1874, P. L., 103.

(17) Clause 10, Sec. 39, Act April 29, 1874, P. L., 103. See Sec. 1348.

(18) Clause 11, Sec. 39, Act April 29, 1874, P. L., 103.

such consent shall be evidenced only by the written consent of said stockholders.¹⁹

Right of Streams by Mining Companies.²⁰

Eminent Domain.

As to Cl. 4, Sec. 34, of the Act of April 29, 1874, which relates to water companies, is as follows:

That companies organized for any of the purposes mentioned in the eighteenth clause of the second section of this Act shall have been organized under any of the general acts, in said eighteenth clause enumerated, and not having for their object the taking of any village, borough or city with water, shall have the same privileges and powers conferred by the said eighteenth clause, and the right to take lands, waters or rivulets shall be in the manner provided in the forty-first section of

the Act, "privileges and powers" relative to taking lands, waters and powers conferred by said clause eighteen, are, the right to "take and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, transmission and using of water power therefrom" is given to companies "for the storage, transportation and use of water." The foregoing provision, though obligatory, is to give to all classes of corporations incorporated under paragraph eighteen, the same right of eminent domain as is given to water storage and transportation companies

¹⁹ Act of June 12, 1879, P. L., 177, Clause 4, Sec. 34, Act April 29, 1874, P. L., 103.

²⁰ *Lehigh Coal and Nav. Co., 200 Pa., 649 (1901).*

²¹ The foregoing provision is re-enacted in the Act of June 12, 1879, P. L., 177, Clause 4, Sec. 34, Act April 29, 1874.

CHAPTER LVIII.

MERCANTILE COMPANIES.

1365. History.

1367. Statement of Purpose.

1366. Incorporation Authorized.

1365. History.

Prior to the passage of the Act of June 25, 1895, P. L., 295, there was no law under which mercantile corporations could be incorporated in Pennsylvania.¹

The said Act of 1895, however, provided for the incorporation of wholesale mercantile companies only, and retail companies of that class could not be incorporated until the passage of the Act of July 9, 1901, amending the eighteenth paragraph of Sec. 2, of the Act of 1874.

1366. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XVI. Buying, selling, vending or dealing in any kind or kinds of goods, wares and merchandise at wholesale.² XVIII. Also including companies for the transaction of any lawful business not otherwise specifically provided for by act of assembly: *Provided, however*, That no corporations shall be chartered under this amendment with the authority to transact more than one kind of business which must be set forth in the charter.³

1367. Statement of Purpose.

A charter will not be granted for the dealing generally in goods and merchandise of all kinds either at wholesale or retail, but the

(1) *Com. v. Lippincott Co.*, 156 Pa., 513 (1893); *Com. v. Thackara Mfg. Co.*, 156 Pa., 510 (1893).

(2) Sec. 1, Act of April 29, 1874, P. L., 73, and Sec. 2, of the Act of April 29, 1874, as amended by the Act of June 25, 1895, P. L., 295.

(3) Act of July 9, 1901, P. L., 624, amending Par. 18, Sec. 2, of the Act of April 29, 1874.

purpose of the corporation must be confined to the articles as are generally recognized as belonging to a branch of the mercantile business.

Charters for corporations to transact both a wholesale and retail mercantile business were refused. Such corporations, however, incorporated under the foregoing amendment of the Act of 1901.

have been granted to mercantile companies with the following statements of purpose:

to deal in general merchandise.

purpose of conducting a store or stores in the buying, selling or dealing in hardware, dry goods, household or other supplies, and all goods generally dealt in by five and ten cent stores.

purpose of doing a general wholesale and retail mercantile business in groceries, dry goods and notions, boots, shoes, and tobacco.

and trading at wholesale and retail in furniture, carpets, draperies and all house furnishing goods, wares and other articles.

to operate a department store in the buying, selling and dealing in notions, hardware and all articles of merchandise ordinarily sold by department stores.

CHAPTER LIX.

NATURAL GAS COMPANIES.

- 1368. How Natural Gas Companies May be Formed—General Powers.
- 1369. Articles of Association—Application for Charter.
- 1370. Publication of Notice of Intention to Apply for Charter—Ten Per Centum of Capital Stock Must be Paid in—Incorporation.
- 1371. May Borrow Money and Secure Loans by Mortgage.
- 1372. Increase of Capital Stock or Indebtedness.
- 1373. Enlargement or Alteration of Territory of Production or Supply.
- 1374. Meeting for Passing Upon Proposed Increases of Stock or Indebtedness.
- 1375. Elections Upon Proposed Increases of Stock or Indebtedness.
- 1376. Ballots — Statement of Shares and Shareholders—Proxies.
- 1377. Return of Increase to Secretary of the Commonwealth.
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- 1380. Municipal Regulations as to Entry on Public Streets.
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- 1383. Acceptance of the Provisions of this Act.
- 1384. Bonus Previously Paid to be Credited.
- 1385. Corporations Accepting the Act Not to Enter Cities or Boroughs Without the Consent of Councils.
- 1386. Consolidation of Companies Formed Under this Act.
- 1387. Punishment for Wilfully Interfering with Pipes.
- 1388. Taxes.
- 1389. Abandoned Wells to be Plugged.
- 1390. Penalty for Not Plugging Abandoned Wells.
- 1391. On Neglect of Corporation, Owners of Adjacent Property May Plug Wells.
- 1392. Repealing Provision.
- 1393. Legislation of Legislation Relative to.
- 1394. Exclusive Powers of Artificial Gas Companies do not Prevent Natural Gas Companies From Furnishing Gas for Light.
- 1395. Companies May Remove Pipes.
- 1396. Natural Gas Companies May Not Lease Their Plants.
- 1397. Gas May Not be Charged for According to the Use to be Made of it by the Consumer.
- 1398. Natural Gas Companies are Public Corporations.
- 1399. Contracts to Supply Gas.
- 1400. Companies Not Liable for Damages for Injuries Resulting

gligence of Con-	Occupied by Natural Gas
Natural Gas Com-	Mains.
f Companies In-	1405. Condemnation of Ease-
rior to 1885.	ments for the Construction of
ion of Natural	Mains of Natural Gas Com-
Cities and Bor-	panies.
Owners of Prop-	1406. Courts May Compel Com-
on City Streets	panies to Bury Pipes Already
	Laid.
	1407. Rates.
	1408. Miscellaneous.

Natural Gas Companies May Be Formed—General

rs.
s may be formed in the manner mentioned herein
ary association of five or more persons, or as other-
herein, for the purpose of producing, dealing in,
storing and supplying natural gas to such persons,
or associations, within convenient connecting dis-
e of pipe, as may desire to use the same, upon such
der such reasonable regulations as the gas company
, and when so formed, each of them, by virtue of
s such, shall have the following powers:
ave succession by its corporate name for the period
harter, and when no period is limited thereby, per-
ect to the power of the general assembly, under the
of the Commonwealth.

maintain and defend judicial proceedings.
make and use a common seal, and alter the same
d have a capital stock not exceeding five million dol-
nto shares such as each company may determine.
produce, mine, own, deal in, transport, store and
l gas, for either light, heat or both, or other pur-
ve all the rights and privileges necessary or conven-

hold, purchase, maintain, lease, mortgage, sell and
real and personal property, including pipes, tubing,
ice and such other machinery, devices or arrange-
purposes of the corporation requires, and the right
upon, take and occupy such lands, easements and
y as may be required for the purpose of laying its
sporting and distributing gas.

Sixth. To appoint and remove such subordinate officers and agents as the business of the corporation requires and to allow them suitable compensation.

Seventh. To make by-laws not inconsistent with the law, for the election and regulation of its directors and officers, the management of its property, the regulation of its affairs and the subscription, collection and transfer of its stock.

Eighth. To enter into any obligation necessary to the transaction of its ordinary affairs.¹

1369. Articles of Association—Application for Charter.

The charter of such intended corporation must be subscribed by five or more persons, three of whom, at least, shall be citizens of this Commonwealth, who shall certify in writing to the Governor:

First. The name of the corporation.

Second. The place or places where natural gas is intended to be mined for and produced or received, the place or places where it is to be supplied to consumers, the general route of its pipe line or lines and branches, the location of its general office.

Third. The term for which said corporation is to exist, which may be limited as to time, or perpetual.

Fourth. The names and residences of the subscribers, and the number of shares subscribed by each.

Fifth. The number of its directors, and the names and residences of those chosen directors for the first year.

Sixth. The amount of its capital stock, and the number and par value of shares into which divided.²

1370. Publication of Notice of Intention to Apply for Charter—Ten Per Centum of Capital Stock Must Be Paid In—Incorporation.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in each of the counties named in the charter of said corporation, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor, and the places where its business in its various branches

(1) Sec. 1, Act of May 29, 1885, P. L., 29. See Sec. 243.

(2) First part of Sec. 2, Act May 29, 1885, P. L., 29.

ducted. The certificate to the Governor shall state the amount of the capital stock named therein has been paid to the treasurer of the intended corporation, and the residence of the treasurer shall be therein given; said certificate shall be acknowledged by at least three of the subscribers before the recorder of deeds of the county in which the office is situate, and the subscribers shall also make and take an oath or affirmation before him, to be endorsed on the certificate, that the statements contained therein are true; and if so endorsed, accompanied with proof of publication as heretofore provided, shall then be produced to the Governor of the Commonwealth, who shall examine the same, and find it to be in proper form, and within the purpose of the act, shall approve thereof and endorse his approval thereon. The direct letters patent to issue in the usual form incorporating the subscribers and their associates and successors into a corporation, to be incorporated, in deed and in law, by the name named in the certificate shall be recorded in the office of the recorder of deeds of the Commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the Auditor General a copy thereof showing the name, location, amount of stock subscribed, and name and address of the treasurer of the corporation. The original certificate with all of its endorsements shall be recorded in the office for recording of deeds in and for the counties named therein, and from thenceforth the subscribers and their associates and successors shall be a corporation, and shall be governed by the terms named in said certificate. *Provided*, That neither this act nor any other shall be construed as to confer, authorize or give color to any claim of right in any corporation, howsoever formed, dealing in natural gas for any purpose in natural gas.³

Borrow Money and Secure Loans by Mortgage.

It shall be lawful for all corporations named in this act to borrow money to secure any indebtedness created by them, by issuing bonds with or without coupons, attached thereto, and to secure the same by a mortgage or mortgages, for the use of the corporation, upon their property real and personal and their

franchises to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding six per centum.⁴

1372. Increase of Capital Stock or Indebtedness.

The capital stock or indebtedness of any corporation created under this act may be increased or its capital stock may be reduced from time to time by consent of the person or bodies corporate holding the larger amount in value of the stock of such company, but such increase of capital stock or indebtedness shall only be made for labor done, or money or property actually received. But every corporation created under the provisions of this act may purchase such real and personal estate, mineral rights, patent rights and other property as is necessary for the purpose of its organization and business, and issue stock therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments, and in the charter and certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but it shall be stated or certified in this respect according to the fact.⁵

1373. Enlargement or Alteration of Territory of Production or Supply.

When and as often as any such corporation shall be desirous of enlarging or altering its territory of production or of supply, for consumption, both or either of them, and its pipe line or lines and branches, it shall, thereupon, make, under its common seal, and deposit in the office of the Secretary of the Commonwealth, a certificate setting forth the particulars of such enlargement and alteration, and shall record in the office of the recorder of deeds of the county or counties to which the enlargement or alteration applies, a copy of the certificate, and thereupon and thereafter the rights, powers and duties of the corporation shall be as to the extension of its business and line as if the same had been originally provided for and embodied in its charter.⁶

(4) Sec. 3, Act May 29, 1885, P. L., 29.

(5) Sec. 4, Act May 29, 1885, P. L., 29.

(6) Sec. 5, Act May 29, 1885, P. L., 29. Publication of notice of intention to enlarge or alter territory is not required by the Act. *Pennsylvania Gas Co. Op. Atty. Gen.*, 1 Pa. C. C., 181 (1886).

ting for Passing Upon Proposed Increases of Stock or Indebtedness.

poration formed hereunder, desirous of increasing its stock or indebtedness as provided by this act shall, by a vote of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth, and notice of the time and object of the meeting shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.⁷

Provisions Upon Proposed Increases of Stock or Indebtedness.

A meeting thus called an election of the stockholders of the corporation shall be taken for or against the proposed increase, and shall be conducted by three judges, who shall be stockholders of the corporation, appointed by the board of directors to hold office for one year, and if one or more of the judges be absent the judge or judges present shall appoint a judge or judges who shall act in the stead of the judge or judges absent, and who shall respectively swear and subscribe an oath or affirmation before an officer sworn by law to administer oaths well and truly and accordingly to conduct the election to the best of their ability, and the judges shall decide upon the qualifications of voters, and when the polls are closed count the number of shares voted for and against the proposed increase, and declare whether the persons or bodies holding the larger amount of the stock of the corporation have consented to the increase or refused to consent thereto, and shall make out duplicate returns of the election stating the number of shares of stock that voted for the increase and the number of shares that voted against the same, and subscribe and deliver the same to the chief officers of the company.⁸

Proxies—Statement of Shares and Shareholders—Proxies.

A proxy shall have endorsed thereon the number of shares represented, and be signed by the holder thereof or by some person holding a proxy therefor, but no share or shares transferred within sixty days shall entitle to vote at such election or

⁷ Act May 29, 1885, P. L., 29.

⁸ Act May 29, 1885, P. L., 29.

meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been executed within three months next preceding the election or meeting; and it shall be the duty of the corporation to furnish the judges at such meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and the number of shares by each respectively held, which statement shall be signed by one of the chief officers of the corporation with an affidavit thereto annexed, that the same is true and correct to the best of their knowledge and belief.⁹

1377. Return of Increase to Secretary of the Commonwealth.

It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the Secretary of the Commonwealth, within thirty days after the election or meeting, one of the copies of the return of such election, with a copy of the resolution and notice calling same thereto annexed; and upon the increase of the capital stock or indebtedness of the corporation, made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of the increase and terms of the same, that is to say:—the terms on which the additional stock is issued; and in case of neglect or omission so to do the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the Auditor General and State Treasurer as accounts for taxes due the Commonwealth are settled and collected; and the Secretary of the Commonwealth shall cause such returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the Auditor General, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return hereinbefore required.¹⁰

1378. Right of Eminent Domain—Method of Exercising the Same.

The transportation and supply of natural gas for public consumption is hereby declared to be a public use, and it shall be the duty of corporations, organized or provided for under this act.

(9) Sec. 8, Act May 29, 1885, P. L., 29.

(10) Sec. 9, Act May 29, 1885, P. L., 29.

consumers along their lines and within their respective natural gas for heat or light or other purposes as they may determine. Any and all corporations that shall hereafter be engaged in such business, shall not be entitled to exercise the right of eminent domain for the laying of pipe lines for the transportation and distribution of natural gas, the right, however, to be exercised as to any burying ground or dwelling, railroad station house or any shop or manufactory in which no fire is necessarily used for manufacturing or repairs, but shall include the right to appropriate land upon which to lay said lines and locate pipes upon and over and across, any lands, rivers, streams, bridges, roads, streets, alleys or other public highways, or other pipe lines, railroads or canals: *Provided*, In case the pipe lines are laid over a railroad operated by steam or canal the same shall be laid over or above such railroad or canal, and in such manner as the railroad or canal company may reasonably direct: *And further*, That any company laying a pipe line under the surface of the ground shall be liable for all damages occasioned by the negligence of such gas company: *And provided* that no company authorized by this act shall have the right to lay longitudinally the right of way, road bed, or bridge over any railroad company: *And provided*, If any pipe line laid in violation of this act, or laid upon or over lands cleared for agricultural purposes, the same shall be buried at least four inches below the surface; and if any line of pipe is laid over or through any waste or woodland, which is not adapted to farming land, then it shall be the duty of the company to immediately bury the said pipe to the depth of at least four inches as aforesaid.^{10*}

Assessment of Damages.

Whenever any appropriation, the corporation shall attempt to compensate the owner as to the damage properly payable for an injury to his or her property, if such owner can be found *sui juris*, failing to agree, the corporation shall tender to the property owner a bond with sufficient sureties to secure the payment of damages; if the owner refuse to accept the same or cannot be found or is not *sui juris*, the same

shall then be presented to the Court of Common Pleas of the proper county, after reasonable notice to the property owner by advertisement or otherwise, to be approved by it. Upon the approval of the bond and its being filed the right of the corporation to enter upon the enjoyment of its easement shall be complete. Upon petition of either the property owner or the corporation, thereafter, the Court of Common Pleas shall appoint three disinterested freeholders of the county to serve as viewers to assess the damages proper to be paid to the property owner, for the easement appropriated by the company, and shall fix a time for their meeting of which notice shall be given to both parties; and as compensation for their services each of said viewers shall receive two dollars and fifty cents for each day in which he may actually have been engaged in such duty, and mileage at the rate of ten cents for each circular mile traveled by him in going from his residence to and from such view. Either party may appeal from the report of the viewers within twenty days after the filing thereof to the Court of Common Pleas and have a jury trial as in ordinary cases, and writ of error to the Supreme Court.¹¹

1380. Municipal Regulations as to Entry on Public Streets.

The right to enter upon any public lane, street, alley or highway for the purpose of laying down pipes, altering, inspecting and repairing the same, shall be exercised in such way as to do as little damage as possible to such highways, and to impair as little as possible the free use thereof, subject to such regulations as the councils of any city may by ordinance adopt.¹²

1381. Disputes Between Companies and Municipalities to Be Decided by Courts of Common Pleas.

In all cases where any dispute shall arise between such corporations and the authorities of any borough, city, township or county through, over or upon whose highways, or between it and any landowner or corporation, through, over or upon whose property or easement, pipes are to be laid, as to the manner of laying the pipes and the character thereof, with respect to safety and public convenience, it shall be the duty of the Court of Common Pleas

(11) Act of May 11, 1897, P. L., 50, amending Sec. 10, Act May 9, 1885, P. L., 29.

(12) Sec. 11, Act May 29, 1885, P. L., 29.

er county upon the petition of either party to the dis-
a hearing to be had to define by its decree what pre-
any, shall be taken in the laying of pipes, and by in-
restrain their being laid in any other way than as de-
shall be the duty of the court to have the hearing and
decree with all convenient speed and promptness. Either
have a right to appeal therefrom as in cases of equity
reme Court, but the appeal shall not be a supersedeas
ree, and proceedings shall be had in like manner upon
n when and as often as any dispute arises as to pipes
d to define the duty of such corporations as to their re-
air, amendment or improvement.¹³

**Right to Enter Boroughs and Cities Must Be Granted
by Ordinance.**

ies incorporated under this act and not referred to or
n the next succeeding section hereof, shall not enter
y down their pipes or conduits on any street or highway
ough or city of this Commonwealth, without the assent
ncils of such borough or city by ordinance, duly passed
ved.¹⁴

Acceptance of the Provisions of This Act.

ociation of persons or corporations heretofore engaged
ness of transporting or dealing in natural gas for any
hether under color of a charter or letters patent of the
ealth, and whether authorized by said charter or letters
to do or not, and any corporation by its charter au-
furnish heat from gas, upon accepting the provisions
by writing under seal of the company, filed in the office
retary of the Commonwealth, and filing therewith its
ent or charter (which shall be a surrender and accept-
of) shall thereupon be a body corporate hereunder, and
to, and possessed of, all the privileges, immunities, fran-
powers conferred by this act upon corporations to be
der the same, and all property rights, easements and
belonging to said associations and corporations, there-
quired by gift, grant, conveyance, municipal ordinance,

¹², Act May 29, 1885, P. L., 29.

¹³, Act of May 29, 1885, P. L., 29. See Sec. 1403.

or assignment, upon such acceptance as aforesaid, shall be and hereby is ratified, approved, confirmed and assured unto such acceptors and corporations with like effect, and to all intents and purposes as if the same had been originally acquired by and under the authority of this act; and such company or corporation shall thereafter be governed solely by the provisions of this act. And the Governor shall forthwith issue to the said acceptors letters patent under this act, under the same name as the company bore which surrendered its charter or letters patent: *Provided*, That this section shall only apply to associations or corporations actually engaged in the transportation and supply of natural gas, or the supply of heat from the same, at and prior to the passage of this act: *And provided further*, That such corporations surrendering their charters and accepting the provisions of this act shall, with such acceptance, and as a part thereof, state in writing the place or places where it is presently intended to mine for and produce or receive natural gas, and the place or places to which it is to be presently supplied, the general route of its pipe lines, the term for which the corporation is to exist, the amount of its capital stock and the number and par value of its shares.¹⁵

1384. Bonus Previously Paid to Be Credited.

Any association within the provisions of section fourteen shall, upon filing its written acceptance as therein provided, become and be entitled to a credit from the Commonwealth to the amount of any bonus previously paid.¹⁶

1385. Corporations Accepting the Act Not to Enter Cities and Boroughs Without the Consent of Councils.

This act shall not be so construed as to permit any corporation, accepting its provisions under and by virtue of section fourteen hereof, to enter into any city or borough, without the assent of councils, except where the corporation, so accepting under section fourteen, had, to some extent prior to the passage of this act, begun supplying natural gas within such city or borough, or had laid pipes for such purpose therein.¹⁷

(15) Sec. 14, Act of May 29, 1885, P. L., 29.

(16) Sec. 15, Act of May 29, 1885, P. L., 29.

(17) Sec. 16, Act of May 29, 1885, P. L., 29.

Consolidation of Companies Formed Under This Act.

Two or more companies existing under this act may, with the consent of a majority of the stockholders in value in each, unite with each other into one corporation under such name as they may agree upon, filing a certificate to such effect in the office of the Secretary of the Commonwealth, and, thereupon such corporation shall have, possess and enjoy all the rights, privileges, property, immunities and franchises which were enjoyed by said companies: *Provided*, That before any such consolidation shall take place the reasons therefor shall be submitted in writing to the Governor of the Commonwealth, and the same shall be approved by him before the consolidation shall be effected. Notice of the proposed consolidation, and the reasons therefor to the Governor, shall be given in writing and published in a newspaper of general circulation printed in the Commonwealth where the general offices of the companies proposing the same are situate. No consolidation shall be valid unless made in the manner prescribed herein, and consolidations except as herein provided, are hereby declared to be void, and any such consolidation shall result in a forfeiture of the franchises of the offending company, and all the stock and property in the same of the stockholders consenting to such attempted consolidation to the Commonwealth.

Punishment for Wilfully Interfering With Pipes, Etc.

Any person shall wilfully and maliciously break, injure and destroy any of the pipes, conduits or other works, or machinery of any natural gas company, or shall wilfully and maliciously interfere with or obstruct any said pipes, conduits or works so as to interrupt the service of any such company, such person or persons shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to a fine not exceeding two hundred dollars, or suffer imprisonment not exceeding one year, or both or either in the discretion of the court.¹⁹

Companies authorized and formed under this act shall pay into the treasury for the use of the Commonwealth such

¹⁹ Act of May 29, 1885, P. L., 29.

²⁰ Act of May 29, 1885, P. L., 29. See Sec. 892.

taxes as now are or hereafter may be imposed upon corporations, under the general corporation or revenue laws of this Commonwealth.²⁰

1389. Abandoned Wells to Be Plugged.

Whenever any well shall have been put down on lands of any company authorized by this act for the purpose of exploring for, or producing gas, upon abandoning or ceasing to operate the same the company shall, before drawing the casing, fill up the well with sand or rock sediment to the depth of at least twenty (20) feet above the gas bearing rock, and drive a round, seasoned wooden plug at least two feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing, and immediately after the drawing of the casing shall drive a round wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least three feet in length tapering in form, and to be of the same diameter at the distance of eighteen inches from the smaller end of the diameter of the well below the point at which it is to be driven. After the plug has been properly driven there shall be filled in on top of the same sand or rock sediment to the depth of at least five feet.²¹

1390. Penalty for Not Plugging Abandoned Wells.

Any company which shall violate the provisions of the preceding section shall be liable to a penalty of two hundred (\$200) dollars to be recovered as debts of like amount are by law recoverable.²²

1391. On Neglect of Corporation, Owners of Adjacent Property May Plug Wells.

Whenever any company shall neglect or refuse to comply with the provisions of this act with regard to plugging wells, any owner of lands adjacent, or in the neighborhood of such unplugged well, may enter and take possession of said abandoned

(20) Sec. 19, Act of May 29, 1885, P. L., 29.

(21) Sec. 20, Act of May 29, 1885, P. L., 29. See Act of May 26, 1890, P. L., 123.

(22) Sec. 21, Act of May 29, 1885, P. L., 29.

ing the same as provided by this act at the expense of
r whose duty it may have been to plug the same.²³

Repealing Provision.

r parts of acts inconsistent with the provisions of this
he same are hereby repealed.²⁴

History of Legislation Relative to Natural Gas Companies.

Gas companies were first incorporated, or sought to be
d, under the provisions of Par. 11, Second Class, of
e Act of April 29, 1874, but it was held that the said
provide for the incorporation of companies with au-
urnish natural gas, directly or indirectly,²⁵ and this
to the passage of the Act of May 29, 1885, P. L., 29,
t a supplement to the Act of April 29, 1874, but an
act.

Exclusive Powers of Artificial Gas Companies Do Not Pre- vent Natural Gas Companies From Furnishing Gas for Light.

ession of an exclusive power by a corporation to fur-
nish gas for lighting will not operate to prevent another
from furnishing natural gas for lighting within the same

Gas Companies May Remove Pipes.

A gas pipe line is under no obligation to let its pipe re-

²² Act of May 29, 1885, P. L., 29.

²³ Act of May 29, 1885, P. L., 29.

²⁴ *Commonwealth v. Penn Fuel Co.*, 108 Pa., 111 (1884);
Commonwealth v. Penn Fuel Co., 111 Pa., 35 (1886). In the first of these cases the court
held that the subject of the incorporation of natural gas companies to

²⁵ *Commonwealth v. Penn Fuel Co.*, 108 Pa., 111 (1884). The Gas Company was incorporated under the Act of 1874, for the
purpose of supplying "heat to the public from gas, within the city of Pitts-
burgh afterward the Penn Fuel Company was chartered under
the purpose of supplying heat to the public within the city
by means of natural gas." Quo warranto. On writ of error,
the franchises were not identical, and therefore not necessarily
the same; and that said act did not authorize either company
to supply natural gas to be converted into heat by the consumer.

²⁶ *Commonwealth v. Penna. Gas Co. et al.*, 13 Pa. C. C., 310
Sec. 898.

main indefinitely, but may abandon the easement acquired under the right of eminent domain, and remove the pipe when its interests require it, but in removing the same the company must do it in a manner and at a time least harmful to the owners of the fee, fill the trench so as to substantially restore the surface of the ground, and make compensation for actual injury to the growing grain or grass, and for any substantial injury to the turf beyond the mere opening and filling of the trench in which the pipe lay. The measure of damages is the amount of injury done, not strictly necessary to the prudent and careful removal of the pipe.²⁷

But where a company, after an abandonment of its pipe for ten years, enters to remove it, the company is guilty of a trespass.²⁸

1396. Natural Gas Companies May Not Lease Their Plants.

A natural gas company incorporated under the Act of May 29, 1885, may not lease its entire plant for a term of years.²⁹

1397. Gas May Not Be Charged for According to the Use Made of it by the Consumer.

A natural gas company which actually supplies gas for both heat and light has no power to make a difference in price according to the use to which the gas is put by the consumers. A corporation of a quasi public character cannot impose a discrimination in the price of its product based solely on the value of the service to the consumer.³⁰

Preliminary injunctions against certain companies, restraining them from increasing their charges for gas, even though in one case the bill alleged that the rates were higher than permitted by ordinance, were dissolved in per curiams.³¹

1398. Natural Gas Companies Are Public Corporations.

Natural gas companies incorporated under the Act of 1885 are

(27) *Clements et ux. v. Phila. Co.*, 184 Pa., 28 (1898). See *Same Parties*, 3 Pa. Super. Ct., 14 (1896).

(28) *Halstead v. American Nat. Gas Co.*, 17 Pa. Super. Ct., 605 (1901).

(29) *Stowe v. Citizens' Nat. Gas Co.*, 23 Pa. C. C., 273 (1898).

(30) *Baily v. Fayette Gas Fuel Co.*, 193 Pa., 175 (1899).

(31) *Allegheny Heating Co.'s Appeal*, 1 Mona., 91 (1889); *Ohio Valley Gas Co.'s Appeal*, *Ibid*, 97 (1889).

orations, and not taxable, locally, on land, where it
 t the gas in the land is necessary to the exercise of its

Contracts to Supply Gas.

of equity has jurisdiction to specifically enforce a con-
 ply natural gas, where a bill is the most convenient
 d a contract by a domestic natural gas company to sell
 all of its surplus gas to another company may be
 enforced. Such a contract is not against public policy.³³
 gas company contracted in writing to supply a manu-
 h gas fuel in his works, reserving the right, however,
 e gas "for want of supply." Held, that the contract
 orize the company to turn off the gas from such manu-
 cause it could not supply him and at the same time
 r consumers on another part of the line. In other
 it could not shut off the gas from one consumer in
 ply another.³⁴

borough by ordinance grants to an individual and his
 r assigns the privilege of laying pipes for natural gas
 s of the borough, and it is stipulated that the grantee
 free to the borough gas for lighting certain build-
 as the grantee, his successors or assigns shall exer-
 nts granted by the ordinance, and it is stipulated that
 shall give a bond and execute a written acceptance of
 ce within ninety days, a corporation which succeeded
 s of the grantee is bound to furnish free gas to light
 gs, and cannot, in a suit in equity brought to compel
 set up that the grantee had not filed a proper bond, or
 not executed a written acceptance within ninety days.³⁵

Companies Not Liable for Damages for Injuries Resulting from the Negligence of Contractors.

gas company, organized under the Act of 1885, is
 or injuries resulting from the negligence of an inde-
 tractor occurring before the acceptance of the work

ary's Gas Co. v. Elk County, 191 Pa., 458 (1899); Appeal of
 tts. et al., 23 W. N. C., 91 (1888).

naugh Gas Co. v. Jackson Farm Gas Co., 186 Pa., 443 (1898).

Lick Mfg. Co. v. Saltsburg Gas Co., 139 Pa., 448 (1890).

l Dist. v. Nat. Gas Co., 18 Pa. Super. Ct., 73 (1901).

with notice of the defect, notwithstanding the second proviso to Sec. 10 of said act, providing "that any pipe line under the provisions hereof shall be liable for all damages occasioned by reason of the negligence of such gas company."³⁶

1401. Foreign Natural Gas Companies.

Foreign natural gas companies which have complied with the provisions of the Act of April 22, 1874, P. L., 108, and are actually engaged in the transporting and distributing of natural gas for public consumption, are invested with the right of eminent domain by Sec. 10, of the Act of May 29, 1885.³⁷

1402. Status of Companies Incorporated Prior to 1885.

The Philadelphia Company, organized in 1884, succeeded to all the powers conferred upon the Empire Contract Company, incorporated under the Act of March 22, 1871, P. L., 1873, p. 955, and to all those conferred on the Pennsylvania Company, formed under the Act of April 7, 1870, P. L., 1025. The grant of powers was sufficient to enable the Philadelphia Company to engage in the production and sale of natural gas, and gave it the right of eminent domain.³⁸

But the right to lay a pipe line in the streets of a municipality was not granted by its charter, and whatever rights it has in that respect must be derived from an acceptance of the Act of May 29, 1885, by the thirteenth section of which companies are forbidden to lay pipes in city or borough streets without the consent of councils. Hence said company cannot lay pipes in cities and boroughs without consent of councils.³⁹

The Act of 1885 does not, however, diminish the powers of any corporation existing by virtue of a prior special charter.⁴⁰

1403. Construction of Natural Gas Pipes in Cities and Boroughs.

Natural gas companies, under the Act of May 29, 1885, are invested by said act with the right of eminent domain. The powers of cities and boroughs to legislate in regard to such companies

(36) *Chartiers Valley Gas Co. v. Waters*, 123 Pa., 220 (1888); *Same v. Lynch*, 118 Pa., 362 (1888).

(37) *In re Ohio Valley Gas Co.*, 6 D. R., 200 (1897).

(38) *Carothers v. Phila. Co.*, 118 Pa., 468 (1888).

(39) *Phila. Co. v. Freeport Borough*, 167 Pa., 279 (1895).

(40) *Carothers v. Phila. Co.*, 118 Pa., 468 (1888); 20 W. N. C., 434.

as are delegated to them by said act. They are to give or withhold their consent, without more. They are not to give their assent with any condition or restriction not authorized by said act, unless the company agree to the same and to the conditions, and even then the conditions or restrictions so authorized by the company must harmonize and not conflict with the consent of councils being given, the regulations authorized to adopt are such only as relate to the manner of laying pipes, altering, inspecting and repairing the sewers, and the character thereof with respect to safety and public convenience. These regulations must also be reasonable.⁴¹

An ordinance is reasonable which prohibits persons from excavating a highway without a permit obtained for that purpose, and reasonable conditions are attached to the issue of the permit. The fee therefor is proportionate to the expense of inspection and the probable expense of inspection.^{41*}

An ordinance granting consent to a natural gas company to lay pipes imposed a tax on pipes so laid. The ordinance required the company an unqualified acceptance of "all the conditions and provisions" of the ordinance. The company accepted, agreeing to comply with the ordinance or as any of the terms of said ordinance may be held illegal or unreasonable by the courts." The company laid pipes, but refused to pay the tax because the Supreme Court had subsequently held such tax invalid. Held, that the company was bound by the contract and liable to the tax.⁴²

An ordinance arising from the denial to a natural gas company of the right to make excavations in a street, in order to reach and repair the pipes, without paying a certain license fee to a borough, is within the meaning of the twelfth section of the Act of 1885, giving the courts power to define the duties of natural gas companies as to relaying and repairing their pipes; and it may reduce the borough fee for permits to so open

City of Pittsburgh v. Allegheny Nat. Gas Co., 115 Pa., 4 (1886). See *Allegheny v. & Sharpsburg Street Ry. Co.*, 159 Pa., 411, where this case is cited. See, also, *People's Nat. Gas Co. v. Pittsburgh*, 1 Pa. C.

Wood Borough v. Scott, 29 Pa. Super. Ct., 156 (1905).
Allegheny City v. People's Nat. Gas Pipeage Co., 172 Pa., 632

the streets, where they have been fixed too high in an arbitrary manner, and in a spirit of resentment.⁴³

1404. Status of Owners of Property Abutting on City Streets Occupied by Natural Gas Mains.

The consent of abutting property owners is not necessary to the laying of mains on the streets of municipalities by natural gas companies duly authorized by ordinance to lay the same.^{43*}

Under the Act of May 29, 1885, a natural gas company, having municipal consent to the use of a street, may lay its pipes under the sidewalk of a street without subjecting itself to liability to damages to owners of abutting properties, under the condemnation proceedings provided by the act, in such case, if the owners have suffered direct injury by the disturbed condition of the sidewalk during the laying of the pipe, or consequential injury to their property, due to the proximity of the pipe line, they must proceed by an action of trespass or upon the company's bond, if such has been given.⁴⁴

And a court of equity may compel a natural gas company, about to lay its pipes under a sidewalk, to enter bond to secure the landowner for the direct injury caused by the disturbed condition of the street and consequential damage to land, as a condition of the dissolution of a preliminary injunction.⁴⁵

1405. Condemnation of Easements for the Construction of Mains of Natural Gas Companies.

The Natural Gas Act of 1885 provides that if the company cannot agree with the owner as to the amount of damages the viewers shall "assess the damages proper to be paid to the property owner for the easement." Beyond this the act fixes no measure of damages. There is, therefore, only the constitutional provision that "just compensation for property taken, injured or destroyed" shall be made by a corporation which takes private property for public use by virtue of its right of eminent domain. "What is

(43) *Fort Pitt Gas Co. v. Borough of Sewickley*, 198 Pa., 201 (1901) *Edgewood Borough v. Scott*, 29 Pa. Super. Ct., 156 (1905).

(43*) *McDevitt et al. v. People's Nat. Gas Co.*, 160 Pa., 367 (1894) *Contra*, *Mallory v. City of Bradford et al.*, 1 D. R., 670 (1892).

(44) *McDevitt et al. v. People's Nat. Gas Co.*, 160 Pa., 367 (1894).

(45) *McDevitt et al. v. People's Nat. Gas Co.*, 160 Pa., 367 (1894).

sation'? Is it anything more than the surplus of
 over the special benefit conferred?"⁴⁶

venience and injury caused by the location of a prop-
 erty and carefully operated pipe line may be consid-
 ered in a proceeding for the assessment of damages to the land
 through which it passes, but such as are produced by the negli-
 gence and operation of a pipe line cannot be consid-
 ered in a proceeding; wherefore in a proceeding for damages
 resulting from the construction of a pipe line, evi-
 dence of leakage had destroyed a spring and injured vegeta-
 tion is proper for the jury, where there is nothing to show
 that leakage was unavoidable, or the result of carelessness
 in constructing and operating the line.⁴⁷

If a natural gas company has appropriated an easement
 for the construction of a gas line across coal land, excluding
 the servitude of subjacent support, the danger of the
 line passing into the mine, in consequence of the subsidence of
 the surface when the coal is removed, is not a subject of compen-
 sating damages for the appropriation, a remedy being
 given by Secs. 10 and 12 of the Act of May 29, 1885. The
 damages for such an appropriation is, first, actual
 damages to the surface, in the construction of the line, includ-
 ing fences and crops; second, depreciation in the value
 of the land as a whole, by the entry and appropriation, excluding
 compensation for all servitude of coal to the surface, and all
 damages that may result from negligence.⁴⁸

The easement acquired by the company is for the laying of the
 pipes beneath the surface of cleared land, or, as expressed by
 the statute, for "burying the pipes at least twenty-four inches
 beneath the surface in all such lands." The company does not re-
 quire a wide strip of surface of twelve feet or of any other
 width which it shall have an exclusive right of possession as
 landowner. What is needed is, the space under the
 surface in which the pipe may rest, together with the right to
 "bury" it out of the landowner's way, and the right to
 enter the land for purposes of maintenance and repairs. Subject to

v. Baden Gas Co., 138 Pa., 301 (1890).

Stanton v. Phila. Co., 161 Pa., 41 (1894).

Gor v. Equitable Gas Co., 139 Pa., 230 (1890).

the easement so defined, the landowner continues in the possession and use of the entire surface as freely as before the burial of the pipe took place.⁴⁹

Entry by natural gas companies upon lands, without a strict compliance with the provisions of the Act of May 29, 1885, makes it liable for trespass.⁵⁰

1406. Courts May Compel Companies to Bury Pipes Already Laid.

A Court of Common Pleas has power, under the Act of 1885 to compel a natural gas company to bury its pipes already laid, and is not confined to disputes arising only from the laying or relaying of pipes.⁵¹

1407. Rates.

Courts of equity will enjoin natural gas companies from arbitrarily imposing excessive rates for gas.^{51*}

1408. Miscellaneous.

Where a natural gas company acquired the property and leases of another company, assuming all existing contracts of the latter company "to the extent that the same can be supplied from the property and lines" of said company, "as at that date existing, but to no other or greater extent." Held, that the contract must be construed to mean that where supply connections can be made at reasonable and usual distances from the main supply pipes, as they existed at the time, the first company was bound to perform the other company's contract to furnish gas prior to the contract between the gas companies, though no connection with its lines had been made before the execution of the contract between the two companies.⁵²

A natural gas company owning the natural gas underlying a tract of land and the rights and privileges necessary to the production and supply of the same, executed a mortgage for the un-

(49) *Clements et ux. v. Phila. Co.*, 184 Pa., 28 (1898).

(50) *Studebaker v. New Castle Gas Co.*, 7 Pa. Super. Ct., 641 (1898).

(51) *Kiskeminetas Township v. Conemaugh Gas Co.*, 14 Pa. Super. Ct., 67 (1900).

(51*) *Waddington et al. v. Allegheny Heating Co.*, 6 Pa. C. C., 96 (1888); *Sewickley Borough et al. v. Ohio Valley Gas Co.*, 6 Pa. C. C., 99 (1888).

(52) *Pittsburgh Carbon Co. v. Phila. Co.*, 130 Pa., 438 (1898).

ance of purchase money thereof. The mortgagee ob-
 judgment on the note secured by the mortgage, and subse-
 secured control of two former judgments. On one of
 levied a special execution, under the Act of April 7, 1870,
 advertised all the property, franchises and rights of the com-
 (except lands held in fee) subject to any mortgage. The
 purchased the same. Held, that the mortgagee was
 led to participate with other creditors in the fund realized,
 where a mortgagee is the purchaser his mortgage is, in
 satisfied. His claim is paid in the purchase of the prop-
 subject to it.⁵³

atural gas company may, without express authority in its
 require from persons supplied with gas a reasonable de-
 secure the payment of its future bills for gas consumed,
 to enforce the payment of other accounts. When the av-
 monthly bill is about \$5, a deposit of \$20 is unreasonable. It
 at the burden is on the plaintiff to show that the non-al-
 of interest on such advances is unreasonable.^{53*}

al gas companies incorporated under the Acts of May 29,
 L., 29, and May 11, 1897, P. L., 50, who do not comply
 ir duty to "furnish gas to persons, corporations and asso-
 within convenient connecting distance" may be compelled
 by a court of equity.⁵⁴

al gas companies will not be incorporated, under the Act
 29, 1885, with the franchise of operating wholly or partly
 rritory of another State.⁵⁵

pany supplying natural gas to the public for which bills
 ered monthly may lose its right to shut off the gas for fail-
 he consumer to pay his monthly bill if it continues the
 and renders a bill for the whole amount due at the be-
 of the next month. If, by the company's rules, the cus-
 as until the 10th of the month to pay the bill for the pre-
 month, the company will be liable for damages for turning
 gas on or before that date because of a delinquent payment
 nths old, gas having been furnished and bills rendered in
 ntime.⁵⁶

Greensburg Fuel Co. v. Irwin Nat. Gas Co., 162 Pa., 78 (1894).

White v. Phila. Company, 16 D. R., 953 (1906).

Corbet v. Oil City Fuel Supply Co., 21 Pa. Super. Ct., 80 (1902).

United Nat. Gas Co. Op. Dep. Atty. Gen., 1 Pa. C. C., 468 (1886).

Dever v. Phila. Co., 34 Pa. C. C., 202 (1907)

CHAPTER LX.

PIPE LINE COMPANIES.

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| 1409. History of Legislation Relative to Pipe Line Companies. | 1414. Powers—Right of Eminent Domain—Method of Exercise of Same. |
| 1410. Consolidation of Pipe Lines. | 1415. Condemnation Proceedings—Appointment of Viewers—Award of Viewers. |
| 1411. Regulation of Pipe Line Companies. | 1416. Recovery for Subsequent Injury. |
| 1412. Companies May Hold and Dispose of Stocks and Bonds of Other Such Companies and of Natural Gas Companies. | 1417. Security for Damages May be Tendered. |
| 1413. Incorporation of Pipe Line Companies Authorized. | 1418. Proceedings on Refusal to Accept Security. |

1409. History of Legislation Relative to Pipe Line Companies.

The incorporation of pipe line companies was authorized by the Act of June 2, 1883, P. L., 61, which amended Par. 18, Class 2, of Sec. 2 of the Act of 1874, so as to provide for such incorporation. In the frequent amendments to the said paragraph made since that time, however, the provision for the incorporation of pipe lines has been uniformly omitted, in the recital of the paragraph as amended. It has been held, however,¹ that this does not work a repeal of the provisions for the incorporation of pipe lines.

1410. Consolidation of Pipe Lines.

A very stringent Act of June 13, 1883, P. L., 93, forbade the consolidation of competing pipe lines, and provided for the forfeiture of the franchises and property of companies so consolidating, but this act was repealed by the Act of March 6, 1893, P. L., 15.

1411. Regulation of Pipe Line Companies.

Pipe line companies are subject to the regulations elaborately prescribed by the Acts of May 22, 1878, P. L., 104, and July 1, 1883, P. L., 186.

(1) *Lehigh Valley Coal Co. v. U. S. Pipe Line Co.*, 3 D. R., 70 (1893).

Companies May Hold and Dispose of Stocks and Bonds of Other Such Companies and of Natural Gas Companies.

Corporations incorporated under the provisions of the act entitled "An act to provide for the incorporation and regulation of corporations," approved April twenty-ninth, Anno Domini thousand eight hundred and seventy-four, for the purpose of buying for petroleum, may subscribe for, purchase, hold and dispose of stocks and bonds of any other corporation, incorporated under the said act for the same purpose, and may also subscribe for, purchase, hold and dispose of stocks and bonds of any corporation incorporated under the provisions of the act entitled "An act to provide for the incorporation and regulation of natural gas companies," approved the twenty-ninth day of May, Anno Domini thousand eight hundred and eighty-five. And may also subscribe for, purchase, hold and dispose of stocks and bonds in any corporation of other States incorporated for similar purposes: *Provided*, That the amount of such stock held by any corporation together with the amount of its capital stock, shall not exceed, in the aggregate, the amount to which the capital of such corporation is limited by the thirty-ninth section of the act to which this supplement is a supplement.²

Incorporation of Pipe Line Companies Authorized.

And companies may be organized under this act, for the right to transport, store, insure and ship petroleum, for that purpose to lay down, construct and maintain pipes, tanks, offices and such other machinery, devices or appliances as may be necessary to fully carry out that right; and with the right to enter upon, take and occupy such land and property, as may be requisite for the purposes of such corporations.³

Powers—Right of Eminent Domain—Method of Exercise of Same.

Companies incorporated or hereafter to be incorporated under the provisions of the act to which this is a supplement, for the purpose of the transportation and storage of oil, by means of pipes and tanks, for the public, shall have the power to take,

² Act of May 3, 1889, P. L., 76. See Sec. 243.
³ Sec. 1, Act June 2, 1883, P. L., 61, amending Par. 18, Part 2, of Act April 29, 1874, P. L., 73.

hold, purchase and transfer such real and personal property as the purposes of the corporation may require, not exceeding the amount limited by its charter, together with the right to appropriate and take lands, easements and rights of way for locating and constructing steam pumps, tanks, pump houses, and offices, and laying down its pipes or tubes, connections and branches, from any point or points in any of the counties in which petroleum is produced to any railroad, canal, navigable river, port or city within this Commonwealth, and for all necessary purposes of the corporation, including right to cross railroads, and the right to appropriate a right of way and locate its pipes or tubes, upon and over, under and across any lands, waters, streams, rivulets, roads, turnpike roads, canal or other public highway, not however, passing through any burying ground or place of public worship, or any warehouse, mill, manufactory, store or dwelling house without the consent of the owner or owners thereof being first had and obtained: *Provided*, That when said pipe line is located through, over, under or upon the streets, lanes, alleys or highways within the corporate limits of any city or borough, the consent of the municipal authorities to said location shall be first had and obtained, which consent said municipal authorities are hereby empowered to give upon terms to be agreed upon by said city or borough authorities, and said corporation: *And provided further*, In case said pipes cross any railroad or canal the same shall be located under or above the same, so however, as not to interfere with the use of the same: *Provided further*, That corporations organized under this act and its supplements, shall not take a fee in any lands acquired under any of its provisions, except such as are acquired by actual purchase, and that upon the abandonment for the purposes of transporting oil, any lands taken by any company organized under the act to which this is a supplement and its supplements, said lands so taken, otherwise than by actual purchase, shall revert to the original owners or their successors: *And provided further*, That any pipe line, so laying its pipes under the provisions of this act, in occupying any lands cleared and used for agricultural purposes, shall bury the same at least twenty-four inches below the surface, and if any line of pipe shall be laid over or through any waste or woodland, which shall afterwards be changed from waste or woodland to farming land, then it shall be the duty of the pipe-line company to immediately bury the pipe, to the depth of at least twenty-four inches as aforesaid: *Provided*

pipe lines shall be laid above the flood lines, or beneath in crossing creeks and rivulets: *And provided further*, any company laying a pipe line under the provisions of this act shall be liable for all damages occasioned by leakage, breakages or tanks: *Provided further*, That all tanks erected for storage or transportation of oil, shall be protected and surrounded by ditches and embankments, so that in case said tanks break or be broken, the oil stored cannot damage adjoining lands.

Condemnation Proceedings—Appointment of Viewers—Award of Viewers.

In all cases, when under the provisions of this act, said corporation is permitted to take lands or property for the public purposes of the corporation, or to acquire a right of way easement for the purpose of locating its pipes or branches over, upon, under or across any lands, streams, rivulets, roads, turnpike roads, railroads or other highways, and the said corporation cannot reach an agreement with the owner or owners of any such lands, road, turnpike road, canal or other highway or franchise, for the compensation proper for the damage done, or likely to be done to or by any such owner or owners of said waters, streams, roads, turnpike road, railroad, land or other highways, which compensation the corporation may enter upon, use in pursuance of the authority given, or by reason of the absence or legal incapacity of the owner or owners, no such compensation can be agreed to by the Court of Common Pleas of the proper county, on application thereto by petition, either by said corporation or the owner or owners, or any one in behalf of either, shall appoint seven disinterested freeholders, residents of the proper county, to view and estimate the damages, and to report the same to the court at a time, not less than twenty (20), nor more than thirty (30) days thereafter for said viewers to meet at or upon the premises, where the damages are alleged to be sustained or incurred, of which time and place ten days' notice shall be given by the petitioner to the said viewers and the other party, and the said viewers, or any five (5) of them, having been first sworn or affirmed, faithfully, justly and impartially to decide the same, shall make a report to the court, and the court shall report to make concerning all matters and things to be done by the corporation, and in relation to which they are authorized

when the term owner is used in the foregoing section to this act, or in this act in reference to an effort to agree with, or to the tender of a bond to, or service of notice upon the owner of roads, railroads, turnpike roads, canals or other highways, the same shall be taken to mean the officers in charge of said road, railroad, turnpike road, canal or other public highways, on whom service of process could be made in any action at law or in equity: *Provided*, That all companies, organized under this act, shall have their terminus in Pennsylvania.⁸

The method of appeal provided for in the foregoing section is exclusive. The Act of June 13, 1874, P. L., 283, does not apply and it is not necessary to file an affidavit with the appeal that the same is not taken for delay, etc.⁹

The bond given to secure the land owner for his damages need not cover damages which may be incurred through leakages, or result from violation of the rights of the owner. Whenever such damages are incurred actions may be maintained therefor.¹⁰

(8) Sec. 3, Act June 2, 1883, P. L., 61.

(9) *Miller v. South West Penna. Pipe Lines*, 2 D. R., 602 (1891).

(10) *Sickler v. U. S. Pipe Line Co.*, 3 D. R., 62 (1893).

CHAPTER LXI.

RESERVATION OF GAME AND FISH ASSOCIATIONS.

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|--------------------------|--------------------------------|
| Corporation Authorized. | 1424. Compensation of Police. |
| in Propagation and | 1425. When Services of Police- |
| tion Companies May | men are no Longer Required. |
| Special Police. | 1426. Corporations Engaged in |
| Appointment by Governor. | the Propagation of Brook or |
| Power of Police—Powers. | Speckled Trout. |
| Police to Wear a Shield. | |

Corporation Authorized.

Associations may be formed under the provisions of this act
V. . . . for the preservation of game and fish.¹

Fish Propagation and Preservation Corporations May Have Special Police.

Corporation, organized under the laws of this Common-
wealth, for the preservation and propagation of fish in this Com-
monwealth, may apply to the Governor to commission such per-
son or persons as the said corporation may designate, to act as policemen for
the protection of the property of such corporation.²

Appointment by Governor.

Governor, upon such application, may appoint such per-
son or persons as many of them as he may deem proper, to be such
policemen, and shall issue to such person or persons so appointed
commission to act as such policemen.³

Oath of Police—Powers.

Any policeman so appointed shall, before entering upon the
exercise of his office, take and subscribe the oath required by the
article of the Constitution, before the recorder of the county

s. 1 and 2, Act April 29, 1874, P. L., 73.

s. 1, Act June 10, 1881, P. L. 101.

s. 2, Act June 10, 1881, P. L., 101.

in which the property of said corporation may be situated, which oath, after being duly recorded by such recorder, shall be filed in the office of the Secretary of State, and a certified copy of such oath, made by the recorder of the county, shall be recorded with the commission in the county in which the property of such corporation, for which such policeman is appointed, may be situated and in which it is intended said policeman shall act; and such policemen so appointed shall severally possess and exercise all the powers of policemen in the county in which they shall be so authorized to act as aforesaid, and the keepers of jails and lock-ups or station houses in said county are required to receive all persons arrested by such policemen for the commission of any offense against the laws of this Commonwealth upon the premises of any such corporation, to be dealt with according to law.⁴

1423. Police to Wear a Shield.

Such corporation police shall, when on duty, severally wear a metallic shield with the word "police" and the name of the corporation, for which appointed, inscribed thereon, and said shield shall always be worn in plain view, except when employed as detectives.⁵

1424. Compensation of Police.

The compensation of such police shall be paid by the corporation for which the policemen are respectively appointed, as may be agreed upon between them.⁶

1425. When Services of Policemen Are No Longer Required.

Whenever any corporation shall no longer require the services of any policeman as aforesaid, they may file a notice to that effect under their corporate seal, attested by their secretary, in the office where the commission of such policeman has been recorded, which shall be noted by the recorder upon the margin of the record where such commission is recorded, and thereupon the power of such policeman shall cease and be determined.⁷

(4) Sec. 3, Act June 10, 1881, P. L., 101.

(5) Sec. 4, Act June 10, 1881, P. L., 101.

(6) Sec. 5, Act June 10, 1881, P. L., 101.

(7) Sec. 6, Act June 10, 1881, P. L., 101.

Corporations Engaged in the Propagation of Brook or Speckled Trout.

and after the passage of this act, any person, company or corporation, engaged in the cultivation or increase of brook or speckled trout by artificial propagation, may take the same from any ponds in any way, and cause to be transported; and the same, or the spawn of the same, at any time, for the purpose of stocking other waters only; and common carriers may transport the same, and dealers may sell the same, for such purpose, on condition that the packages thereof transported are accompanied by a certificate of a justice of the peace, certifying that the trout are sent by the owner or owners or agents, or partner, engaged in fish culture; and any person, company or corporation may take in, in any way, at any time, upon the premises of any person, under permission of the owner thereof, brook or speckled trout to be kept and used for artificial propagation only: That nothing in this section shall prohibit any person, company or corporation, engaged in the propagation of any species of fish from transporting and selling the same for food purposes, during the open season for such fish. Any person transporting or selling such trout, so propagated, during the closed season for brook or speckled trout, for food purposes, shall, on conviction as provided in section thirty-eight of this act, be subject to a fine of not more than one hundred dollars for each offense.⁸

⁸ 1901, Act May 29, 1901, P. L., 308.

CHAPTER LXII.

REAL ESTATE AND SAFE DEPOSIT COMPANIES.

1427. Incorporation Authorized. 1429. Safe Deposit Companies.
1428. Real Estate Companies.

1427. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XVI. . . . the purchase and sale of real estate, or for holding, leasing and selling real estate, [and] for safe deposit companies. . . . ¹

1428. Real Estate Companies.

The capital stock of corporations for the purchase and sale of real estate, or for holding, leasing and selling real estate, and for maintaining or erecting and maintaining walls or banks for the protection of low lying lands, shall consist in the aggregate at no time of more than six hundred thousand dollars to be divided into shares of fifty dollars each; the said corporations shall have the right to purchase, take, hold and enjoy real estate, in fee simple, on lease or upon ground rent, as well that already purchased or acquired as that hereafter purchased or acquired, to improve, lease, mortgage and sell the same in such parts and parcels, and on such terms as to time of payment as they may determine, and to convey the same to the purchaser, in fee simple or for any less estate, or upon ground rents and in like manner to mortgage, sell, convey, or extinguish any ground rent reserved out of any real estate so sold; and may maintain or erect and maintain walls or banks of stone, earth or other materials for the protection of meadow or low lying lands from the encroachments of water. *Provided*, That the quantity of real estate held at any one time in cities or boroughs shall not exceed five hundred acres, and outside thereof shall not exceed ten thousand acres, but any number of acres desired may be protected from encroachment by water.²

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Act of June 25, 1895, P. L., 295, amending Sec. 2, Act April 29, 1874.

(2) Sec. 9, Act April 17, 1876, P. L., 36, amending Sec. 35, Act April 29, 1874.

Safe Deposit Companies.

Safe deposit companies shall have power to receive upon or safe keeping, jewelry, plate, stocks, bonds, notes and property of every kind, upon terms to be prescribed by laws of such corporation, which by-laws shall at all times be in force in the place or places of business of such corpora-

9, Act April 17, 1876, P. L., 36, amending Sec. 35, Act April 29,

CHAPTER LXIII.

REFRIGERATING COMPANIES.

1430. Incorporation Authorized.

1431. Powers.

1430. Incorporation Authorized.

Paragraph ten of the second sub-division of the second section of an act entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, which reads as follows:

"X. The supply of ice to the public," be and the same is hereby amended to read as follows:

The supply of ice to the public, and the establishment of a system of refrigeration by which the public may obtain materials for refrigerating purposes through pipes or conduits from central stations.⁴

1431. Powers.

Any company incorporated under the provisions of the act to which this is a supplement, for the purpose of establishing a system of refrigeration in the city, borough or district in which it may be located, shall have authority to establish such system of refrigeration, and supply materials through pipes or conduits from central stations for refrigerating purposes to such persons, partnerships and corporations residing therein and adjacent thereto as may desire the same, at such price or prices as may be agreed upon; and also to make, erect and maintain therein the necessary buildings, machinery and apparatus for manufacturing such material and distributing the same, with the right to enter upon any public street, lane, alley or highway for the purpose of laying down, maintaining and using pipes and conduits necessary therefor, and altering, inspecting and repairing the same, doing as little

(4) Sec. 1, Act June 24, 1895, P. L., 253.

damage to said streets, lanes, alleys and highways, and obstructing the free use thereof as little as possible: *Provided*, That no such system for the supply of ice to the public, or of refrigeration, shall be established or constructed within the limits of any city, borough or district without the consent of the proper municipal or borough authorities, and subject to their regulations.⁵

(5) Act April 25, 1903, P. L., 303, amending Sec. 2, Act June 24, 1895, L., 253.

CHAPTER LXIV.

SALVAGE CORPS.

1432. Incorporation Authorized.
1433. Powers.
1434. Annual Meeting—Representation—Assessments.
1435. Statements of Amounts of Premiums Received to be Fur-

- nished Corporation by Insurance Companies.
1436. Acceptance of Act by Salvage Corporations Otherwise Incorporated.

1432. Incorporation Authorized.

It shall and may be lawful for the president of any corporation, company or association, and agent of any corporation, company or association, doing the business of fire insurance in cities of the first class in this Commonwealth, or any of them, to associate themselves together and become a body corporate with all the powers of a corporation upon compliance with the general laws for erection of corporations, approved April twenty-ninth, Anno Domini one thousand eight hundred and seventy-four, and its supplements, for the purpose of protecting life and property from fire in said cities. Such corporations shall be known as the salvage corps of the city in which they shall be organized.¹

1433. Powers.

Every such corporation shall have power to appoint and maintain a corps of men, with proper officers, whose duty it shall be as far as practicable, to protect life and property from damage by fire subject to such general rules and regulations relating to going to and returning from fires as are in force in the fire departments of such cities, with the same privileges of right of way as belong to said departments. And while in attendance at any fire such corps of men and officers shall be subject to the orders of the chief of the fire department of such city wherein it shall be located. Said corporation shall provide suitable apparatus to save and preserve life and property at or after any fire, and power is hereby granted

(1) Sec. 1, Act May 22, 1895, P. L., 102.

corps, and its officers to enter any building on fire, or immediately exposed to or in danger of taking fire from burning buildings, to protect and save life and property and to remove such property or any part thereof, at or after the fire: *Provided however*, That nothing in this shall be construed as to lessen in any way the authority of the officers and members of the fire department.²

Annual Meeting—Representation—Assessments.

On the first month of June of each year there shall be held a meeting of the corporation created under or accepting the provisions of this act, of which ten days' previous notice shall be inserted in at least two newspapers published in the city wherein such corporation is located, at which meeting each incorporated insurance company, or unincorporated insurance association, doing business in such city, whether its officers or agents may be members of such corporation or not, shall have the right to be represented by one of its officers or its agents, and each organization so represented at such meeting shall be entitled to one vote. A majority of the whole number so represented shall have the power to determine on the question of sustaining the corps of men and officers of the corporation hereinbefore provided for, and of fixing the amount of expense which shall be incurred therefor for the next fiscal year then next to ensue, which amount shall in no case exceed two per centum on the aggregate of premiums returned hereinafter provided for; and the whole of such amount, or so much as may be necessary, shall be assessed upon the organizations doing fire insurance business in such city, whether such corporation is established, in proportion to the several amounts of premiums returned as received by each as hereinafter provided, and such assessment shall be payable within thirty days after the same are levied, and shall be collectible by such corporation as a part of law of the State of Pennsylvania.³

Statements of Amount of Premiums Received to Be Furnished by Insurance Companies.

For the payment of persons employed, and to main-

², Act May 22, 1895, P. L., 102.

³, Act May 22, 1895, P. L., 102.

tain the buildings and apparatus for saving life and property contemplated every such corporation is empowered to require a statement to be furnished semi-annually, by all insurance companies, associations, underwriters, agents or persons, of the aggregate amount of premiums received for insuring real, and personal property in the city where such corporation is located from loss by fire for and during the six months next preceding the thirtieth day of June and the thirty-first day of December in each year, which statement shall be sworn to by the president or secretary of such insurance company or association, or by the agent or person so acting and effecting such insurance in said city, and shall be handed to the treasurer of such corporation provided for by this act within thirty days after the time to which such returns are to be made; said returns shall specify:

First. The amount of gross premiums collected by such insurance company or association or agent during said six months on term policies of all kinds on risks located in said cities, deducting only premiums paid for re-insurance or cancellations on such term policies during said period.

Second. The gross amount of deposits on all perpetual policies in force on the last day of said six months on risks located in such cities. It is hereby provided, however, that the aggregate sum on which assessments shall be levied by said salvage corps shall be the amount of premiums on term policies ascertained as above recited and the premiums produced by the amount of perpetual deposits held by said insurance companies, associations, or agents calculated at four per centum per annum.⁴

Every person or organization neglecting to make such return within thirty days after such notice, shall forfeit and pay the sum of one hundred dollars for every month of such default; said fine to be recovered by suit as other fines and taxes are now by law recoverable.⁵

1436. Acceptance of Act by Salvage Corporations Otherwise Incorporated.

In every city wherein any corporation has heretofore been created by law for the purpose of protecting and saving life and property in or contiguous to burning buildings and to remove or

(4) Sec. 4, Act May 22, 1895, P. L., 102.

(5) Sec. 5, Act May 22, 1895, P. L., 102.

charge of such property, or any part thereof, when necessary, corporation shall not be abolished by this act, but upon filing the Auditor General a certificate or acceptance of the proceeds hereof shall be and continue hereunder as the salvage corps of the city wherein it is located, and enjoy all the powers and privileges of this act: *Provided however*, If it shall not so file its certificate within three months after the passage of this act then the persons designated in this act may organize another corporation to execute the objects and purposes of this act and thereupon the charter of every such corporation so refusing to accept shall be hereby repealed.⁶

Sec. 6, Act May 22, 1895, P. L., 102.

one year, and the order so extending such terms shall be under his hand and seal of office.⁸

1444. Power to Hold Real Estate.

It shall be lawful for any association incorporated under this act to purchase, hold and convey real estate as follows:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith as security for debts contracted previous to the execution of any such mortgage.

Third. Such as it shall purchase at sales under judgments, decrees or mortgages held by such corporation, or shall purchase to secure debts due to said corporation.⁹

1445. Names of Officers to Be Transmitted to Commissioner of Banking.

Before any savings bank or institution for the encouragement of saving, intended to be incorporated under this act, shall be authorized to receive deposits, such corporation shall transmit to the Auditor General the name, residence and post-office address of each of the officers and trustees and the place where its business is to be carried on, designating the same by street and number when practicable. The persons named in the certificate for incorporation, issued pursuant to the provisions of this act, shall be the first trustees of such corporation and shall have the entire management and control of all the affairs of the corporation subject to the provisions of this act.¹⁰

1446. Change of Location of Bank.

And it shall be lawful for any such savings fund, with the approval in writing under the seal of the Auditor General, to change its location within the limits of any city or town wherein it may be established; and in effecting such change of location, such corporation owning a banking house and lot may purchase such addi-

(8) Sec. 7, Act May 20, 1889, P. L., 246. See Note 10.

(9) Sec. 8, Act May 20, 1889, P. L., 246.

(10) Sec. 9, Act May 20, 1889, P. L., 246. The duties of the Auditor General under this act are transferred to the Commissioner of Banking by Act February 11, 1895, P. L., 4. Sec. 10.

as the corporation may require, and such banking lot previously owned and occupied shall be sold.¹¹

Trustees and Other Officers.

Business of every such corporation shall be managed and controlled by a board of trustees of not less than thirteen, who shall elect from their number a president and two vice-presidents, and may also elect or appoint from their number or otherwise, such other officers as they may see fit; and all vacancies in such board by expiration of term of office or resignation or otherwise shall be filled by the board of trustees as soon as practicable at a regular meeting after such vacancy occurs. This board of trustees shall have power to make and alter the rules and regulations for the election of officers and fix the duties, the appointment of committees and generally for the management, managing and directing the affairs of the corporation; and such by-laws, rules and regulations are not repugnant or inconsistent with the provisions of this act and of the Commonwealth laws of the Commonwealth, or of the United States. If insolvency of said savings fund be occasioned by the fraud or neglect of the trustees aforesaid, the trustees by whose negligence the insolvency was in whole or in part occasioned shall each be liable to the depositors and creditors thereof a proportional share of the losses, the proportion to be ascertained by dividing the whole loss among the whole number of trustees liable for its re-imbursement.¹²

Trustees Not to Have Any Interest in the Profits of the Corporation—Nor Borrow Its Funds, Etc.

No trustee of any such corporation shall have any interest in the profits, direct or indirect, in the gains or profits thereof nor shall he directly or indirectly receive any pay or emolument for his services except as hereinafter provided; and no trustee or officer of such corporation shall directly or indirectly, for himself or for any partner or others, borrow any of its funds, deposit any money in any manner use the same, except to make such current payments as are authorized by the board of trustees, or for any trustee or officer of any such corporation hereafter

¹⁰ Act May 20, 1889, P. L., 246. See Note 10.

¹¹ Act May 20, 1889, P. L., 246.

become an endorser or surety, or become in any manner an obligor for moneys loaned by or borrowed of such corporation.¹³

1449. Vacation of Office of Trustee.

Whenever a trustee of any savings bank shall hereafter become a trustee, officer, clerk or employe in any other savings bank, or upon his borrowing directly or indirectly any of the funds of the savings bank of which he is trustee, or becoming a surety or guarantee for any money borrowed of, or a loan made by such savings bank, or upon his failure to attend the regular meetings of the board, or to perform any of the duties involved upon him as trustee, for six successive months without having been previously excused by the board for such failure, the office of such trustee shall thereupon immediately become vacant; but the trustee vacating his office by failure to attend meetings or to discharge his duties may, in the discretion of the board, be eligible to a re-election.¹⁴

1450. Bonds of Officers and Agents—Salaries.

The trustees of any such corporation shall have the power to require from the officers and agents of the corporation such security, to be fixed and approved by the Court of Common Pleas of the county in which said savings bank or institution is located, for their fidelity and the faithful performance of their duties, as shall be deemed necessary, fix the salaries of such officers and agents subject to the provisions of this act.¹⁵

1451. Deposits.

It shall be lawful for any corporation, incorporated under this act, to receive on deposit any sum or sums of money that may be offered by any person or persons or by any corporations or societies, and to invest the same, credit and pay interest thereon. The sums so deposited, together with the dividends or interest credited thereon, shall be repaid to such depositors respectively, or to their legal representatives, after demand in such manner and at such times, and after such previous notices and under such regulations, as the board of trustees shall prescribe; which regulations

(13) Sec. 12, Act May 20, 1889, P. L., 246.

(14) Sec. 13, Act May 20, 1889, P. L., 246.

(15) Sec. 14, Act May 20, 1889, P. L., 246.

shall be printed in the pass-books or other evidences of deposit, and shall be evidence between the corporation and depositors holding the same of the terms on which deposits therein acknowledged are made; and every corporation shall have the right to limit the aggregate amount which any one person or persons or societies may deposit, and may, in its discretion, refuse to receive a deposit, and may also at any time refuse to pay on all or any part of any deposit, nor shall the aggregate of such deposits to the credit of any one individual or corporation at any time exceed five thousand dollars exclusive of accrued interest.¹⁶

Deposits in Name of Minor or Married Woman—Trust Deposits.

Whenever any deposit shall be made by or in the name of any person who is a minor, or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right of such depositor, free from the control or lien of all persons whatsoever except creditors; and it shall be paid, together with the dividends or interest thereon, to the person in whose name the deposit shall be made, and the receipt or quittance of such person or female shall be a valid and sufficient release and discharge for such deposits or any part thereof to the corporation. No deposit shall be made by any person in trust for another, unless a valid and proper notice of the existence and terms of such trust shall be given in writing to the bank, in the event of the death of the trustee the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person to whom such deposit was made.¹⁷

Investment of Funds.

It shall be lawful for the trustees of any saving bank to invest the funds deposited therein only as follows:
In the stocks or bonds of interest-bearing notes or the obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal.

¹⁵ Act May 20, 1889, P. L., 246.

¹⁶ Act May 20, 1880, P. L., 246.

Second. In the stocks or bonds of the Commonwealth of Pennsylvania bearing interest.

Third. In the stocks or bonds of any State in the Union that has not within ten years previous to making such investments, by such corporation, defaulted in the payment of any part of either principal or interest of any debt authorized by any legislature of such State to be contracted.

Fourth. In the stocks or bonds of any city, county, town or village of any State of the United States, issued pursuant to the authority of any law of the State, or in any interest-bearing obligation issued by the city or county in which such bank shall be situated.

Fifth. In bonds and mortgages on unincumbered, improved real estate, situate in this State.¹⁸

From and after the passage of this act all provident institutions, savings institutions and savings banks, chartered under special acts of this Commonwealth of Pennsylvania may, notwithstanding any provisions of their charter, loan the moneys received by them on deposit upon the bonds of any county, city, borough township or school district within this Commonwealth, issued pursuant to the authority of any law of this Commonwealth for the payment of which the faith and credit of the municipality issuing them are pledged.¹⁹

1454. Temporary Investment of Current Receipts.

It shall further be lawful for any such corporation to deposit temporarily in banks or trust companies, as provided in the last preceding section of this act, the excess of current daily receipts over the payments, until such time as the same can be judiciously invested in the securities named; and whenever it shall appear to the Auditor General or to any of the examiners duly authorized to visit and inspect these saving funds, that the trustees of any such corporation are violating the spirit or intent of the provisions of this act, by keeping permanently uninvested all or an undue proportion of the money received by them, it shall be his or their duty to report the facts to the Attorney General, who shall proceed against such corporation as provided by law.²⁰

(18) Sec. 17, Act May 20, 1889, P. L., 246.

(19) Act May 25, 1897, P. L., 93. See Sec. 1468—last proviso.

(20) Sec. 18, Act May 20, 1889, P. L., 246. See Note 10.

Loans on Notes or Bills of Exchange Forbidden—Loans on Real Estate.

It shall not be lawful for the trustees of any savings bank or corporation incorporated under this act, to loan the money deposited with them, or any part thereof, upon notes, bills of exchange or drafts, or to discount any such notes, bills of exchange or drafts. In all cases of loans upon real estate, a sufficient bond secured by a mortgage thereon shall be required of the borrower, and the expenses of searches, examinations, certificates of title and of value and of drawing, perfecting and recording shall be paid by such borrower.²¹

Insurance of Buildings on Mortgaged Real Estate.

Where buildings are included in the valuation of any real estate in which a loan be made by any such corporation, they shall be insured by the mortgagor in such company or companies as the trustees shall direct, and the policy of insurance shall be assigned to the corporation, and the loss made payable as its interest may appear. It shall be lawful for such corporation to issue a policy of insurance from year to year or for a longer term than a year, and in case the mortgagor shall neglect to do so, and fail to pay the amount paid to the mortgagor. And all the necessary expenses and expenses paid by such corporation for such renewals shall be paid by such mortgagor to such corporation. There shall be a lien upon the property so mortgaged, recoverable with interest from the time of payment as part of the money loaned, to be paid by such mortgage.²²

Prohibition to Deal or Trade in Personal Property.

It shall be unlawful for any corporation incorporated under this act, directly or indirectly, to deal or trade in real estate or in personal property, wares, merchandise or commodities whatever, except as authorized by this act and except such personal property as may be necessary in the transaction of its business.²³

Interest on Deposits.

It shall be the duties of the trustees of every such corporation

¹⁹, Act May 20, 1889, P. L., 246.

²⁰, Act May 20, 1889, P. L., 246.

²¹, Act May 20, 1889, P. L., 246.

to regulate the rate of interest or dividends, not to exceed five per centum per annum upon the deposits therewith, in such manner that the depositor shall receive, as nearly as may be, all the profits of such corporation after deducting necessary expense and reserving such amount as the trustees may deem expedient as a surplus fund for the security of depositors, which, to the amount of fifteen per centum per annum of their deposits, the trustees of any such corporation are hereby authorized gradually to accumulate and hold to meet any contingency or loss in its business, from the depreciation of its securities or otherwise: *Provided however*, That the trustees of any such corporation may classify its depositors according to the character, amount and duration of their dealings with the corporation, and regulate the interest or dividends allowed in such manner that each depositor shall receive the same ratable proportion, with interest or dividends, as all others of its class. It shall be unlawful for the trustees of any savings bank to declare or allow interest on any deposit for a longer period than the same has been deposited, and no dividends or interest shall be declared, credited or paid, except by the authority of a vote of the board of trustees, duly entered upon their minutes, whereon shall be recorded the yeas and nays upon each vote, and whenever any interest or dividend shall be declared and credited in excess of the interest or profits earned and appearing to the credit of the corporation, the trustees so voting for such dividends shall be jointly and severally liable to the corporation for the amount of such excess, so declared and credited. And it shall be the duty of the trustees of any such corporation, whose surplus amounts to fifteen per centum of its deposits, at least once in three years to divide, equitably, the accumulation beyond such authorized surplus, as an extra dividend to depositors in excess of the regular dividends hereinbefore provided. A notice posted conspicuously in the bank of a change in the rate of interest shall be equivalent to a personal notice.²⁴

1459. Trustees to Examine Books.

It shall be the duty of the trustees of every corporation incor-

(24) Sec. 22, Act May 20, 1889, P. L., 246.

Sections 23 and 24, of the Act of May 20, 1889, are superseded by Sec. 4 of the Act of February 11, 1895, P. L., 4, as amended by Sec. 1, Act of May 29, 1901, P. L., 345, and Sec. 5 of said Act of 1895, as amended by Act of June 24, 1895, P. L., 233. See Secs. 997-998.

der this act to make a thorough examination, at least every year, of the books, vouchers, assets and affairs general; the statements furnished to the Auditor General, and accurate balances of the depositor's ledger have been to see if any discrepancies exist between the amount deposited, as shown by such balances, and the amount due or as shown by the general ledger.²⁵

Limiting the Number of Trustees.

It shall be lawful for the board of trustees of any such savings bank, by a resolution of its board, a copy of which shall be filed with the Auditor General, to reduce the number of trustees in the original charter of such corporation to a number not less than the minimum named in this act; such reduction to be made gradually by the occurrence of vacancies by death, resignation or forfeiture, until the number is reduced to thirteen, or to any other number as shall be designated in the aforesaid resolution. The number of trustees may be increased to any number not less than the number named in the resolution for that purpose, where reasons therefor shall be shown to the satisfaction of the Auditor General and his written consent obtained thereto.²⁶

Compensation to Trustees.

It shall be lawful for the trustees of such corporation, acting in person or by proxy, of the same, whose duties require and receive a regular attendance at the institution, to receive such compensation as shall be determined by the opinion of a majority of the board of trustees shall be reasonable, but such majority shall be exclusive of any trustees who shall not receive such compensation; but it shall not be lawful to pay trustees as such for their attendance at the meetings of the board.²⁷

Trustees Must Be Residents of the State.

It shall be unlawful to elect a trustee of any savings bank who is not a resident of this State, and removal from the State by any trustee after elected shall vacate his office.²⁸

²⁵, Act May 20, 1889, P. L., 246. See Note 10.

²⁶, Act May 20, 1889, P. L., 246. See Note 10.

²⁷, Act May 20, 1889, P. L., 246.

²⁸, Act May 20, 1889, P. L., 246.

1463. Change of Name.

The names of any institutions incorporated under this act may be changed by complying with all the rules and regulations in force in the State in regard to changing the names of corporations.²⁹

1464. Discontinuing of Business by Solvent Bank.

Whenever the trustees of any solvent saving bank, shall deem it necessary and expedient to close the business of such corporation, they may, by the affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting to be called for that purpose, of which all the trustees shall have notice, declare by resolution its determination to close such business and pay the money to the depositors and creditors and surrender the corporate franchise. The vote upon such resolution shall be taken by ayes and noes, and the resolution and the votes thereon shall be recorded in the minutes of the board of trustees, and a copy of the record of such proceedings, certified by the president and secretary of the corporation, shall be filed with the Auditor General. The trustees shall therefore give notice to all the depositors and creditors of the adoption of such resolution, by publication thereof in the newspaper or newspapers most likely to give the same proper publicity, and by printed or written notices, personally served upon or mailed to, every depositor and creditor of such saving bank, at their last known residence, postage prepaid.³⁰

1465. Trustees to File With Commissioner of Banking a Statement of Depositors Not Claiming Sums Due Them.

When the trustees of any such saving bank shall have paid the sums due, respectively, to all the depositors and creditors whom they can discover, and who claim their deposits or the moneys due them, it shall be the duty of such trustees to make a transcript or statement from the books of said saving bank, of the names of all the depositors and creditors who do not claim, or have not yet received, the balances to their credit or due them, and of the sums due them respectively, and to file such transcript in the Auditor General's department and to pay over and transfer all such unclaimed and unpaid deposits, credits and money, to the treasurer of the State. The trustees shall thereupon report their proceedings, duly certified to, before the Court of Common Pleas

(29) Sec. 29, Act May 20, 1889, P. L., 246.

(30) Sec. 30, Act May 20, 1889, P. L., 246.

ty in which the corporation is situated, and upon such
the petition of the trustees, and upon notice to the At-
torney General and the Auditor General and such other notice as
may deem necessary, the court shall adjudge the fran-
chise terminated and the existence of the corporation termin-

ces.

Associations incorporated in pursuance of this act shall be
in the same manner as other corporations without capital

Renewal of Charters of Savings Banks—Proceedings.

Any institution, savings institution and savings banks,
banks of discount, and savings banks and trust companies, not
banks of issue, chartered under the laws of the Common-
wealth of Pennsylvania, may renew and extend their charters,
rights and franchises for the period of twenty years
or following, namely: When the board of trustees or
directors of any such institutions or savings banks, or
banks of discount, or savings banks and trust companies,
banks of issue, shall deem it expedient to have such
corporate rights and franchises renewed and extended,
they shall so decide at a meeting called to consider the subject,
and give notice by publication for three months in two
newspapers published in the city or town where said institution
is a bank, or bank of discount, or savings bank
company, not being banks of issue, is located, that at a
time the stockholders, where there are stockholders, and
directors, managers or trustees, where there are no stock-
holders, of such institutions or savings bank or banks, or banks
of discount, or savings banks and trust companies, not being
banks of issue, will meet at the office or place of business of such
institution or savings banks, or bank, or bank of discount, or sav-
ings bank or trust company, not being banks of issue, and vote for
or against the proposition to renew and extend said charter, cor-
porate rights and franchises.³³

³⁰ Act May 20, 1889, P. L., 246.

³¹ Act May 20, 1889, P. L., 246.

³² Act May 10, 1889, P. L., 185, amending Sec. 1, Act June
1, 1889, P. L., 201.

Savings banks chartered by special acts prior to the adoption of the Constitution, and rechartered under the Act of 1885, P. L. 210, are subject to the provisions of the Constitution and the Banking Department Act of 1895, P. L., 4. Such a bank is expressly prohibited from loaning money upon its own stock as collateral security for loans by the Act of June 14, 1901, P. L. 561.^{33*}

1468. Certificate to Secretary of the Commonwealth—Proceedings Thereupon.

If a majority in interest of said stockholders, or directors, managers or trustees, where there are no stockholders, shall decide in favor of such renewal and extension, said action shall be certified to the Secretary of the Commonwealth, together with a statement of the condition of such institution, upon a blank to be furnished by the Auditor General upon application made, said statement to be made by the cashier, secretary or president, under oath, attested by at least three of the board of directors, trustees or financial board of said institution, and a copy of its charter and all special acts of assembly relating to said institution or bank or bank of discount, savings bank and trust company, not being banks of issue, who shall refer the same to the Governor, Attorney General and Auditor General upon a certificate being given by them or a majority of them, that such renewal is not inconsistent with the public interests, and thereupon the said Secretary of the Commonwealth shall issue a certificate, under the seal of said Commonwealth, that the charter, corporate rights and franchises of said provident institution, savings institution, or savings banks, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, are duly renewed and extended for a period of twenty years: *Provided* That said provident institution, savings institutions or savings banks, or banks, or banks of discount, or savings banks and trust companies, not being banks of issue, shall thereafter hold its charter subject to the provisions of the Constitution of the State *Provided also*, That no provident institution, savings institution or savings bank, having no capital stock, renewing or extending its charter, corporate rights and franchises under the provisions of this act, shall thereafter

(33*) Bank Loans. Op. Atty. Gen., 32 Pa. C. C., 183 (1906).

be allowed the privileges of a bank of discount, nor be allowed to loan any money received on deposit, except upon first mortgage or lien upon real estate within this Commonwealth, upon the bonds or securities of the United States or of this State, or upon county, city, borough, township or school bonds of any county, city, borough, township or school district, or any other good and valid securities: *And provided*, That no bank rechartered under the provisions of this act shall charge a greater rate of discount than six per centum per annum.³⁴

469. Taxation of Savings Banks.

Savings banks having capital stock are taxable for State purposes under the provisions of the Act of July 15, 1897, P. L., 292.³⁵

Savings banks not having capital stock are taxable for State purposes upon their net earnings or income.³⁶

Savings banks having capital stock, and therefore paying a tax thereon, are exempt from taxation upon the bonds, mortgages, etc., held by them if they collect and pay either the tax of four mills provided for by the Act of July 15, 1907, or the optional ten-mill tax provided thereby, before the first day of March in each year.³⁷

(34) Sec. 1, Act May 10, 1889, P. L., 185, amending Sec. 1, Act June 30, 1885, P. L., 201.

(35) See Sec. 832.

(36) See Sec. 843.

(37) *People's Savings Bank v. Monongahela Consol. Coal & Coke Co.*, Pa. Super. Ct., 153 (1905); *Com. v. Clairton Steel Co.*, 11 Dau. Co. Rep., 25 (1908); *Com. v. White Haven Water Co.*, 11 Dau. Co. Rep., 22 (1908).

CHAPTER LXVI.

SEWER COMPANIES.

- | | |
|--|-------------------------------|
| 1470. Incorporation Authorized. | Cannot Agree Upon Amount to |
| 1471. Municipalities may Purchase Property of. | Be Paid. |
| 1472. Proceedings Where Parties | 1473. Sewer Companies have no |
| | Exclusive Rights. |

1470. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XXV. The construction and maintenance of sewers, culverts, conduits and pipes, with all necessary inlets and appliances for surface, and under-surface, and sewage drainage for the health, comfort and convenience of inhabitants, and sanitary improvement in cities, boroughs and townships of the Commonwealth, and for this purpose to enter upon and occupy any public highway with the consent of the local authorities.¹

1471. Municipalities May Purchase Property of Sewer Companies.

From and after the passage of this act, it shall be lawful for any municipality, in which any corporation, created and existing under and by virtue of the laws of this Commonwealth, have constructed and are maintaining, or may hereafter construct and maintain, sewers, culverts, conduits and pipes, with the necessary inlets and appliances, for surface, under surface and sewage drainage, to become the owners of such sewers, culverts, conduits and pipes, with the necessary inlets and appliances, for surface, under surface and sewage drainage, and the property of such company, by paying therefor the actual value of the same at the time of taking by the municipality.²

1472. Proceedings When Parties Cannot Agree Upon the Amount to be Paid.

In case of disagreement as to the amount to be paid, the same

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Sec. 1, Act June 10, 1893, P. L., 435.

(2) Sec. 1, Act April 19, 1901, P. L., 82.

be ascertained in the same manner as damages are now assigned for private property taken, injured or destroyed by reason of municipal improvements, under the act of the general assembly of the Commonwealth of Pennsylvania, approved six days of May, one thousand eight hundred and ninety-one (Pam. Laws, 75), entitled "An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, and grading, paving, macadamizing or otherwise improving streets and alleys, providing for the assessment of the damages to private property resulting therefrom, and the construction of sewers and payment of damages, costs and expenses thereof, including damages to private property resulting therefrom." ³

Sewer Companies Have No Exclusive Rights

The Act of 1893, under which plaintiff company was incorporated, did not confer any special rights, privileges or powers upon it except the right to enter upon and occupy public highways with the consent of local authorities. The naked grant of permission to lay pipes to streets to lay pipes confers no exclusive right. However right the plaintiff had under the ordinance of 1894 was subject to the future use of the highways by said borough when it chose to construct a sewage system of its own." ⁴

Sec. 2, Act April 19, 1901, P. L., 82. See Act May 24, 1901, P. L., 195. *Olyphant Sewage-Drainage Co. v. Olyphant Borough*, 211 Pa. 195 (1905).

CHAPTER LXVII.

SHIP BUILDING AND TRANSPORTATION COMPANIES.

1474. Incorporation Authorized.

1475. Increase of Capital Stock.

1476. Property Taken in Pay-

ment of Increased Stock.

1474. Incorporation Authorized.

Corporations may be formed under the provisions of this act for VIII. The building of ships, vessels or boats, and carriage of persons and property thereon.¹

1475. Increase of Capital Stock.

It shall be lawful for any corporation organized for the building of ships, vessels and boats, and carriage of persons and property thereon, to increase the capital stock of said corporation to any sum not exceeding five million dollars, which said capital shall be divided into shares of not more than one hundred dollars each, and all subscriptions to the capital stock of such corporation shall be paid in such instalments and at such times as the directors may require.²

1476. Property Taken in Payment of Increased Stock.

It shall be lawful for any corporation, increasing its capital stock under the provisions of this act, to take such real and personal estate, mineral rights, patent rights and other property, as is necessary for the purposes of its organization and business, in payment for subscriptions to the stock so issued, and the stock so issued after payment made of the full par value thereof, shall be declared and be full paid stock, not liable to any further calls or assessments, and the holders of stock so full paid shall not be liable in their individual capacity for any of the debts of the corporation, except for debts due to laborers, mechanics or clerks for services rendered while in the employ of the corporation, and in that case for no period exceeding six months.³

(1) Secs. 1 and 2, Act of April 29, 1874, P. L., 73.

(2) Sec. 1, Act of April 17, 1889, P. L., 37. See Sec. 243.

(3) Sec. 2, Act April 17, 1889, P. L., 37.

CHAPTER LXVIII.

SHIP CANAL COMPANIES.

rations may be formed for the purpose of constructing
ntaining a ship canal for public use between the great
d points on navigable rivers in this Commonwealth, under
visions of the Act of June 24, 1895, P. L., 221, and the
ents thereto contained in the Act of June 8, 1907, P. L.,

CHAPTER LXIX.

STEAM HEAT COMPANIES.

1478. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XI. The supply of light heat or power to the public by any other means.¹

1479. Powers of Steam Heat Companies.

The powers of steam heat companies will be found set forth in Sec. 889.

Under the provisions of the Act of June 2, 1887, P. L., 310, amending Cl. 1, Sec. 34 of the Act of April 29, 1874, P. L., 90, steam heat companies have power to lay their pipes upon any public street, lane, alley or highway, subject to the restrictions contained in said act, and a turnpike is a public highway within the meaning of the act.²

(1) Sec. 1, Act of April 29, 1874, P. L., 73, and Sec. 1, of the Act March 8, 1889, P. L., 136, amending Sec. 2, of the Act of April 29, 1874, P. L., 73.

(2) *Berks and Dauphin Tpk. Rd. Co. v. Lebanon Steam Co.*, 5 Pa. C., 354 (1888).

CHAPTER LXX.

STREET RAILWAY AND TRACTION COMPANIES.

PART I—ACTS OF ASSEMBLY.

Motor and Cable Compa-
(Act of June 13, 1883).

POWER COMPANIES FOR OP-
ING PASSENGER RAILWAYS
TRACTION COMPANIES.

ACT OF MARCH 22,
1887).

owers.

Application for Charter.

Power to Borrow Money

Secure Same by Mortgage.

Increase of Capital Stock
Indebtedness.

Meeting of Stockholders.

Elections on Proposed In-
s of Stock or Indebted-

Ballots — List of Stock-
s.

Return to Secretary of the
Commonwealth.

Acceptance of This Act.
Bonus.

Sale or Lease of Property
Franchises of Traction or
Power Companies.

Traction or Motor Power
Companies May Operate Leased
as a General System.

Street Railway Companies
se Lines are not on Town-
or County Roads May Sell
Lease Property and Fran-
s to Traction or Motor
panies.

RAILWAY COMPANY ACT OF
Y 14, 1889 (P. L., 211).

Articles of Association—
Incorporation—General Powers.

1495. Requirements Before Incor-
poration — Municipal Consents
Must First be Obtained.

1496. Subscriptions to Stock.

1497. Extensions and Branches.

1498. Increase of Capital Stock.

1499. Power to Borrow Money
and Issue Bonds.

1500. Capital Stock.

1501. Election of Officers—Spe-
cial Meetings.

1502. Manner of Conducting An-
nual Elections.

1503. Business Statements at An-
nual Meetings of Stockholders.

1504. Dividends.

1505. Office.

1506. Return to Auditor General.

1507. Portion of Tracks of Other
Companies May be Used.

1508. Consent of Local Authori-
ties—Route to be Continuous.

1509. When Construction to Be-
gin.

1510. May Occupy and Use
Turnpikes.

1511. May Cross Railroads at
Grade.

1512. Right to Use of Streets—
Penalty for Obstructing Move-
ment of Cars.

1513. Acceptance of This Act.

1514. Street Railway Companies
May Carry United States Mails.

1515. Abandonment of Portion
of Routes.

1516. Application for Local Con-
sent to be Made Within Two
Years—Road to be Completed
Within Five Years.

- 1517. Right to Acquire Property and Lay Tracks Thereon.
- 1518. May Not Connect Tracks with Any Railroad Tracks.
- 1519. Street Railway Companies May Acquire Private Property on Which to Construct Tracks.
- 1520. Right of Eminent Domain Conferred on Street Passenger Railways—Exercise of Right.
- 1521. Proceedings Where Compensation Cannot be Agreed Upon.
- 1522. Appointment of Viewers—Assessment of Damages—Appeals.
- 1523. Proceedings in Cases of Disputed Title.
- 1524. Appointment of Trustee or Guardian ad Litem.
- 1525. Proceedings When Property is in Two or More Counties.
- 1526. Proceedings When Railway Crosses Private Property.
- 1527. Right to Transport Express Matter and Light Freight Conferred Upon All Street Railways.
- 1528. Regulation of Maximum Rate of Fare to be Charged by Street Railway Companies in Cities of the Second Class.

**ELEVATED OR UNDERGROUND, OR
PARTLY UNDERGROUND COMPANIES,
WITH SURFACE RIGHTS.**

(ACT OF JUNE 7, 1901, P. L.,
523).

- 1529. General Powers.
- 1530. Certificate of Incorporation.
- 1531. \$25,000 for Each Mile of Proposed Road to be Subscribed.
- 1532. Payment of Subscriptions to Stock—Stock Certificates.
- 1533. Increase of Capital Stock.
- 1534. Power to Borrow Money and Mortgage Property.
- 1535. Annual Meetings.

- 1536. Right of Eminent Domain.
- 1537. Office.
- 1538. Use of Property of the Commonwealth.
- 1539. Branches and Extensions—Abandonment of Lines.
- 1540. Use of Tracks of Other Companies.
- 1541. Merger with Other Street Railway Companies.
- 1542. Time for Construction.
- 1543. Increase of Capital Stock.
- 1544. Use of Turnpikes.
- 1545. May Bridge or Tunnel Water Courses.
- 1546. Elevated and Underground Passenger Railways to be Incorporated Only With Consent of the Governor, Secretary of the Commonwealth and Attorney General.
- 1547. Companies Chartered to Build Underground Roads May Build Elevated Ones, and Vice Versa.

MISCELLANEOUS PROVISIONS.

- 1548. Local Authorities May Contract with Street Railway Companies to Remove Tracks and Change Routes.
- 1549. Municipalities May Contract with Surface, Elevated, Underground or Motor Power Companies to Fix and Regulate the Powers and Duties of the Contracting Parties.
- 1550. Policemen May be Commissioned for Street Railway Companies.
- 1551. Companies in Cities of the First Class May Use Other Than Animal Power in the Carriage of Passengers.
- 1552. Companies in Cities of the Second and Third Classes May Use Other Than Animal Power in the Carriage of Passengers.
- 1553. Cities of the First Class

ent to the Extension
Railways.

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tution.

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Employees.

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nce of Actual Service
a Facie Proof of Per-
Work.

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to be Issued for Less

Not to be Issued for
Property Until a Cer-
s Been Filed.

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unt of Capital Stock
Paid in.

edings to Enforce the
Provisions.

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visions.

oad Companies For-
Acquire Stock or

Street Railway Com-
ralling Their Lines,

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Such Companies.

oad and Other Cor-
Forbidden to Con-

with or Otherwise
Parallel or Competing

ty.
mon Carrier Corpor-
rbidden to Engage in

Mining or Manufacturing Arti-
cles for Transportation Over
Their Lines.

1567. Penalty.

1568. Steam and Electric Rail-
ways Companies Required to
Annually Report Their Mileage
to the Secretary of Internal Af-
fairs.

1569. Penalty.

1570. Boroughs May Build
Bridges Over Street Railways.

1571. Procedure for Construc-
tion of Same.

1572. Ascertainment of Damages
When Parties Cannot Agree.

1573. Borough Authorities May
Contract with County Commis-
sioners and Street Railway
Companies for Construction of
Bridge.

1574. When Bridge Crosses a
Stream Over Which County is
Authorized to Build Bridges.

1575. What Contracts for Con-
struction of Such Bridges Shall
Stipulate — Payments — Main-
tenance of Bridges.

1576. Street Railways Not Con-
tributing to Cost of Construc-
tion of Bridges to Pay Toward
Maintenance of Bridges.

1577. Plans and Specifications of
Bridges—Contracts.

1578. Contracts Where County
Does Not Join in Same.

1579. Recording of Contracts.

tor and Cable Companies—(Act of June 13, 1883.)

tion to the corporations for profit of the second class,
to be created by the second section of an act, entitled
to provide for the incorporation and regulation of cer-
porations," approved April twenty-ninth, one thousand
hired and seventy-four, corporations may be created for
uction and operation of motors and cables, and the
apparatus and mechanical fixtures for applying and

operating the same, and said corporations may, in the manner provided in said act, increase their capital stock to an amount exceeding the amount authorized therein, for mining and manufacturing companies, and such corporation shall have the power to enter upon any street in which a passenger railway now is, or hereafter may be constructed, with the consent of said passenger railway, and may construct, maintain and operate thereon such motors, cables and necessary or convenient apparatus and mechanical fixtures, as will provide for the traction of the cars of said railway company: *Provided*, That in such construction shall be subject to such reasonable regulations for the protection and convenience of public travel on said streets, as shall be ordained by the councils of the borough, town or city in which the same may be located; said corporation shall also have power to receive and hold such real estate as may be necessary for its purposes, and such personal estate as may be acquired by it in the prosecution of its business, and to enter into contracts with passenger railway companies to construct, maintain and operate motors, cables and other appliances necessary for the traction of the cars, and to demand and receive as security therefor, mortgages by said companies of their railways and franchises, which mortgages the latter are hereby authorized to execute and deliver.¹

MOTOR POWER COMPANIES FOR OPERATING PASSENGER RAILWAYS
BY CABLES, ELECTRICAL OR OTHER MEANS—TRACTION
COMPANIES.^{1*}

1481. Powers.

Corporations may be formed, in the manner hereinafter mentioned, by the voluntary association of five or more persons, for the construction and operation of motors and cables, or other machinery for supplying motive power to passenger railways, and the necessary apparatus for applying the same; and such corporations shall have the power to enter upon any street upon which a passenger railway now is, or may hereafter be constructed, with the consent of said passenger railway company, and make, construct, maintain and operate thereon such motors, cables, electrical or other appliances, and the necessary and convenient apparatus and mechanical fixtures, as will provide for

(1) Sec. 6, Act June 13, 1883, P. L., 122.

(1*) See Sec. 1594.

the cars of such passenger railway; and to enter into
with passenger railway companies to construct and
motors, cables or other appliances necessary for the trac-
tion cars: *Provided*, Any such construction and opera-
tion shall be subject to such reasonable regulations, for the pro-
moting of public travel on any street so occupied, as shall be re-
quired by any borough, town or city, in which the same may be
by ordinance duly enacted: *And provided further*, That
no company which may be hereafter incorporated under this act,
upon any street for the purpose of constructing thereon
any such motors, cables or other appliances, until after
the entry of the councils of the borough, town
in which said street may be located, shall have been ob-
liged that no company heretofore incorporated shall be
avail itself of the provisions of the ninth section of
the act after it shall have filed in the office of the Secretary
of the Commonwealth its stipulation, duly sealed and attested,
not to enter for the purpose aforesaid upon any street
now occupied by it, with such motors, cables or other
appliances without such consent to such entry of the councils of
the borough, town or city in which said street may be located.
And as to each of such corporations, by virtue of its exist-
ence, shall have the following powers:

to have perpetual succession by its corporate name, sub-
ject to the powers of the general assembly under the Constitution
of the Commonwealth.

to maintain and defend judicial proceedings.

to make and use a common seal, and alter the same
and to have a capital stock not exceeding five mil-
lions of dollars, divided into shares as each of said companies
may determine.^{1**}

to hold, purchase, maintain, lease, mortgage, sell and
convey real and personal property, as the purposes of the cor-
poration may require.

to make by-laws, not inconsistent with law.

to enter into any obligation necessary for the transac-
tion of its business.

To invest its funds in the purchase of shares of stock
of any corporation whose works, railway, motors or

other property are leased, operated or constructed by it: *Provided*, That the total par value of such shares of stock of other corporations thus held, shall not, at any time, be in excess of fifty per centum of the aggregate par value of the shares of its own capital stock then issued, and that the total par value of such shares and bonds of other corporations, thus held, shall not, at any time, be in excess of the par value of the shares of its own capital stock then issued.

Eighth, To lease the property and franchises of passenger railway companies, which they may desire to operate, and to operate said railways.²

1482. Application for Charter.

The charter of such intended corporation must be subscribed by five or more persons, three of whom, at least, shall be citizens of this Commonwealth, who shall certify in writing to the Governor:—

First. The name of the corporation.

Second. The place or places where its business is proposed to be conducted, and the location of its general office.

Third. The term for which said corporation is to exist, which may be limited as to time, or be perpetual.

Fourth. The names and residences of the subscribers, and the number of shares subscribed by each.

Fifth. The number of its directors and the names and residences of those chosen directors for the first year.

Sixth. The amount of its capital stock, and the number and par value of shares into which divided.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed and the intention to make application therefor. The certificate to the Governor shall state that ten per centum of the capital stock named therein has been paid in cash to the treasurer of the intended corporation, and the name and residence of the treasurer shall be therein given. The said certificate shall be acknowledged by at least three of the subscribers thereto before the recorder of deeds of the county in which its office is situated, and the subscribers shall also m

(2) Sec. 1, Act March 22, 1887, P. L., 8.

...ribe an oath or affirmation before him, to be endorsed
...ertificate, that the statements contained therein are true;
...ate so endorsed, accompanied with proof of publication
...as heretofore provided, shall then be produced to the
...of the Commonwealth, who shall examine the same, and,
...it to be in proper form and within the purpose named
...all approve thereof and endorse his approval thereon, and
...ers patent to issue in the usual form, incorporating the
...s and their associates and successors into a body politic
...rate, in deed and in law, by the name chosen; and the
...shall be recorded in the office of the Secretary of the
...wealth, in a book to be kept by him for that purpose, and
...rthwith furnish to the Auditor General an abstract there-
...ving the name, location, amount of capital stock and
...address of the treasurer of the corporation. The orig-
...cate, with all of its endorsements, shall then be recorded
...e for recording deeds in and for the proper county, and
...ceforth the subscribers thereto, and their associates and
...shall be a corporation for the purpose and upon the
...ed in said certificate.⁸

Power to Borrow Money and Secure Same by Mortgage.

...be lawful for all corporations named in this act to bor-
...y to secure any indebtedness created by them, by issu-
...with or without coupons attached thereto, and to se-
...ame by a mortgage or mortgages, for the use of the
...rs, upon their property real and personal and their
...to an amount not exceeding the capital stock of the
...n paid in, and at a rate of interest not exceeding six per

Increase of Capital Stock and Indebtedness.

...ital stock or indebtedness of any corporation created
...act may be increased, or its capital stock may be re-
...m time to time, by consent of the persons or bodies
...holding the larger amount in value of the stock of
...any; but such increase of capital stock or indebted-

², Act March 22, 1887, P. L., 8.

³, Act March 22, 1887, P. L., 8, as amended by Act July 2, 1895,

ness shall only be made for labor done or money or property actually received, and not to a greater amount than five millions of dollars.^{4*} But every corporation created under the provisions of this act may purchase such real and personal estate, patents, rights and other property as is necessary for the purposes of its organization and business, and issue stock therefor and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call or assessments, and in the charter and certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the facts. *Provided*, That the total issue of capital stock of any one corporation, including the increase above permitted, shall not exceed five million dollars.⁵

1485. Meeting of Stockholders.

Any corporation, formed hereunder, desirous of increasing its capital stock or indebtedness, as provided by this act, shall by resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth, and notice of the time, place and object of the meeting shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate.⁶

1486. Elections on Proposed Increases of Stock or Indebtedness.

At a meeting thus called, an election of the stockholders of the corporation shall be taken, for or against, the proposed increase, which shall be conducted by three judges, who shall be stockholders of the corporation, appointed by the board of directors to hold the election; and if one or more of the judges be absent, the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation, before an officer authorized by law to administer oaths, well and truly and a

(4*) See Sec. 243.

(5) Sec. 4, Act March 22, 1887, P. L., 8. See Sec. 243.

(6) Sec. 5, Act March 22, 1887, P. L., 8.

law to conduct the election to the best of their ability; judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for or against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of the corporation have consented to the increase or refused to consent to it, and shall make out duplicate returns of the election, stating the number of shares of stock that voted for the increase and the number that voted against the same, and subscribe and deliver the same to one of the chief officers of the company.⁷

Ballots—Lists of Stockholders.

Each ballot shall have endorsed thereon the number of shares represented, and be signed by the holder thereof, or by some person holding a proxy therefor, but no share or shares transferred within sixty days shall be entitled to a vote at such election, nor shall any proxy be received nor entitle the holder thereof, unless the same shall bear date and have been executed at least three months next preceding the election or meeting; and it shall be the duty of the corporation to furnish the judges presiding at the meeting with a statement of the amount of its capital stock, and the names of persons or bodies corporate holding the same, and the number of shares by each respectively held, which statement shall be signed by one of the chief officers of the corporation, with an affidavit thereto annexed that the same is true to the best of his knowledge and belief.⁸

Return to Secretary of the Commonwealth.

It shall be the duty of such corporation, if consent is given to the same, to file in the office of the Secretary of the Commonwealth, within thirty days after the election or meeting, one copy of the return of such election, with a copy of the notice and notice calling same thereto annexed; and upon the request of the capital stock or indebtedness of the corporation, pursuant thereto, it shall be the duty of the president or some other officer of such corporation, within thirty days thereafter, to return to the Secretary of the Commonwealth, under oath, a statement of the amount of the increase and terms of the same, that is to

⁶, Act March 22, 1887, P. L., 8.

⁷, Act March 22, 1887, P. L., 8.

say:—the terms on which the additional stock is issued; and in case of neglect or omission so to do the corporation shall be subject to a penalty of one thousand dollars, which penalty shall be collected on an account settled by the Auditor General and State Treasurer as accounts for taxes due the Commonwealth are settled and collected; and the Secretary of the Commonwealth shall cause such returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the Auditor General; and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return heretofore required.⁹

1489. Acceptance of This Act.

Any company heretofore incorporated for the purposes named in this act, upon accepting the provisions of this act in writing under the seal of the corporation, filed in the office of the Secretary of the Commonwealth, together with a surrender of its letters patent or charter, which shall be filed with said certificate, shall thereupon become and be a body corporate hereunder, and shall be entitled to and possessed of all the privileges, franchises and powers conferred by this act upon corporations to be created under this act, and all the properties, rights and privileges belonging to such corporation, theretofore acquired by gift, grant, conveyance, municipal ordinance, assignment or otherwise, upon said surrender shall be and are hereby ratified, approved, confirmed and assured to such corporation, with like effect and to the intents and purposes as if the same had been originally acquired by and under authority of this act; and such corporation shall thereafter be governed solely by the provisions of this act; and the Governor shall forthwith cause new letters patent, under this act, to issue to such corporation under the same name as the company had in the charter under which it was originally incorporated: *Provided*, That nothing herein contained shall be construed as a release of any restrictions, now existing, upon any passenger railway company as to the amount of fare which it is entitled to charge, nor shall this act in any wise affect pending legislation. *And provided further*, That any company thus becoming a body corporate, in the way above provided, shall be subject to all the contracts, duties and obligations theretofore resting upon the cor-

(9) Sec. 8, Act March 22, 1887, P. L., 8.

se charter is thus surrendered, or to which said company shall be in any way liable.¹⁰

us.

Corporations organized hereunder, or which may hereafter be organized, shall be liable to pay to the Commonwealth, upon every issue of capital stock, and upon every increase of the same, the same bonus required to be paid by corporations organized under "the corporation act of one thousand eight hundred and seventy-four," which bonus shall be paid at the rate of one cent in the instalments by that act prescribed. Corporations organized which shall avail themselves of the provisions of this act, shall be credited with the amount of any bonus paid by them severally theretofore paid.¹¹

Transfer or Lease of Property and Franchises of Traction or Motor Power Companies.

A traction or motor power company heretofore or hereafter incorporated under the laws of this Commonwealth is hereby authorized to sell or to lease, or to lease and to sell its property and franchises, as well those owned as those leased, operated or controlled by it, including so much of any line or lines of passenger railway owned, leased or controlled by it as is located upon or adjacent to streets, to any other traction or motor power company incorporated under the laws of this Commonwealth, upon such terms as may be agreed upon. Such traction or motor power company may also enter into contracts with other traction or motor power companies incorporated under the laws of this Commonwealth for the operation of lines of railway and property owned, leased, operated or controlled by it: *Provided*, That the provisions herein contained shall be construed as authorizing any traction or motor power company to acquire, lease or operate so much of the line of any other motor power company as occupies the same upon any street, highway or county road.¹²

Traction or Motor Power Companies May Operate Leased Lines as a General System.

And after the passage of this act it shall be lawful for

⁹, Act March 22, 1887, P. L., 8.

¹⁰, Act March 22, 1887, P. L., 8.

¹², Act May 15, 1895, Sec. 1, P. L., 64.

any traction or motor power company, or street passenger railway company, owning, leasing, controlling or operating different lines of street railways of different companies, to operate as a general system so much of said different lines as occupy streets, and from time to time to lay out such new routes or circuits over the whole or any part of such street or streets occupied by the tracks of the different companies which it thus owns, leases, controls or operates, and upon such routes or circuits to run cars for such distances, and in such directions, as will in the opinion of the operating company best accommodate public travel: *Provided*, That nothing in this act contained shall be construed to give any traction or motor power company, or street passenger railway company, any authority to run its cars upon the tracks of any street passenger railway company not owned, leased, controlled or operated by it without the consent of such company, or the consent of the traction or motor power company owning, leasing, controlling or operating such company: *Provided, however*, That such consent by any traction or motor power company leasing, controlling or operating such street passenger railway company shall not be given for any longer term than is covered by the agreement for such lease, control or operation.

1493. Street Railway Companies. Whose Lines Are Not on Township or County Roads May Sell or Lease Property and Franchises to Traction or Motor Companies.

Any street passenger railway company heretofore or which may hereafter be incorporated in this Commonwealth, under general or special laws, whose line or lines are not on township or country roads, is hereby authorized to sell or to lease, or to let, and to sell its property and franchises to any traction or motor power company incorporated under the laws of this Commonwealth, not operating a line or lines of railway on township or country roads, upon such terms as shall be agreed upon. Any such railway company may also contract with any such traction or motor power company or companies for the construction upon and along its line of railway and that of any companies operated or controlled by it, whose line or lines are not on township or country roads, of motecables, electric or other apparatus and appliances, and for

of the price thereof by bonds to such extent as may not be issued full paid capital stock, secured, if it shall be advisable, by mortgages of its franchises and property. There may also be entered into between such companies for the use of the lines of railway of such railway companies as traction or motor power companies as operators, lessees or licensees, by means of cables, electric and other appliances or engines, and also by means of any motive power which could be used upon the line owned, leased or operated by said company: *Provided*, That nothing herein contained shall be construed as permitting the propulsion of cars along the line of a street passenger railway by means of steam: *And provided* That no traction or motor power company shall enter upon or use the streets or highways of any city or borough for the construction thereon of any of the appliances or fixtures necessary to operate any street passenger railway company by cables, electric or mechanical device or power, until after the consent of the municipal or local authorities shall be given to an entry upon the streets or highways for the purpose of such construction.

STREET RAILWAY ACT OF MAY 14, 1889, P. L., 211, AND SUPPLEMENTS THERETO.

Articles of Association—General Powers.

A number of persons, not less than five, may form a company for the purpose of constructing, maintaining and operating a street railway for public use in the conveyance of passengers, by any means other than locomotive, on any street or highway, now laid out or to be laid out, and upon which no track is laid or authorized to be laid, under any existing charter, with the privilege of occupying so much of any street, highway or bridge, so occupied or authorized to be occupied, as is hereinafter provided. For the purpose of such formation said persons may make and sign articles of association, in which shall be stated the name of the company, the term of years the said company is to continue; the length of the road, as near as may be; the streets, highways, and bridges over which the said railway is to be laid and constructed; showing the circuit of the route, the amount of the capital stock of

the company, which shall not be less than six thousand dollars to every mile of road proposed to be constructed, and the number of shares of which said capital stock is to consist, and the names and places of residence of a president and not less than four nor more than twelve directors of the company, who shall manage its affairs until the first annual meeting thereafter and until others are chosen in their places; each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in said company. On compliance with the provisions of the second section of this act, such articles of association shall be acknowledged by at least three of the directors, before some officer competent to take acknowledgments of deeds, and may be filed in the office of the Secretary of the Commonwealth, who shall endorse thereon the day on which they were filed, and record the same in a book to be provided by him for that purpose; whereupon the Governor shall issue his letters patent creating the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, a corporation by the name specified therein, and shall possess the powers and privileges following, namely:

First. To have succession by its corporate name for the period limited in its articles of association.

Second. To sue and be sued, complain and defend, in any court of law or equity.

Third. To make and use a common seal, and alter the same at its pleasure.

Fourth. To take, hold, purchase, operate, lease, and convey such real and personal property, estate and franchises, as the purposes of the corporation shall require.^{14*}

Fifth. To appoint such officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Sixth. To make by-laws, not inconsistent with the Constitution or any existing laws, for the management of its property and regulation of its affairs, and for the transfer of its stock.

Seventh. To sell or lease their road and franchises, or part thereof, to traction or motor power companies, or to other passenger

(14*) This paragraph did not, as originally occurring in Sec. 1 of the Act of June 7, 1901, P. L., 514, confer upon street railways the right of eminent domain. *Marysville Water Co. v. West Fairview & Marysville Elec. St. Ry. Co.*, 13 D. R., 365 (1903). See Secs. 1520-1526.

er railway companies, or to acquire the roads, property and franchises of other passenger railway companies by lease or purchase. Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the county or counties within which the route of the proposed company lies, once a week for three weeks, setting forth the character and route of the corporation to be formed, and the intention to make application therefor.¹⁵

495. Requirements Before Incorporation—Municipal Consents Must First Be Obtained.

Such articles of association shall not be filed and recorded in the office of the Secretary of the Commonwealth, and letters patent issued thereon, until at least two thousand dollars of stock, for every mile of railroad proposed to be made, shall have been subscribed thereto, and ten per centum paid thereon in good faith and in cash to the directors named in said articles of association; nor until there is endorsed or annexed thereto an affidavit, made by at least three of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed, and ten per centum paid in cash thereon, as aforesaid, and that it is intended in good faith to construct and to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid; nor until, and unless, there be filed with the same a duly certified copy of an ordinance, or ordinances, of all of the cities, boroughs, and townships of the first class, and by resolution of the board of road supervisors of townships of the second class, through which the route of the company extends, authorizing the construction thereof by the company, and evidencing the consent of the local authorities, required by the Constitution and by this act.¹⁶

496. Subscriptions to Stock.

When such articles of association are filed and recorded in the office of the Secretary of the Commonwealth, the directors named herein shall, in case the whole of the capital stock is not before

(15) Sec. 1, Act May 3, 1905, P. L., 368, amending Sec. 1, Act June 7, 1901, P. L., 514, which amended Sec. 1, Act May 14, 1889, P. L., 211.

(16) Act June 1, 1907, P. L., 366, amending Sec. 2, Act May 14, 1889, P. L., 211.

subscribed, keep an open book for subscription at their office, giving such notice as they may deem expedient, and shall continue to receive subscriptions until the amount of capital stock required shall be subscribed: *Provided*, That no subscription shall be valid unless, at the time of subscribing, such subscribers shall pay the directors ten per centum of the amount of such subscription in cash.¹⁷

1497. Extensions and Branches.

Any company incorporated under this act, desiring authority to construct any branch or extension, shall file in the office of the Secretary of the Commonwealth a duly certified copy of a resolution of its stockholders, setting forth in detail the route of the proposed branch or extension, which paper shall be forthwith presented to the Governor for his approval; and if the Governor shall be of opinion that said proposed branch or extension is within the general scope of the original charter, and does not conflict with any rights previously granted and in existence, he shall approve the same; whereupon the Secretary of the Commonwealth shall issue a certificate that said branch or extension has been duly authorized, and, upon the same having been duly recorded in the court or counties within which such extension lies, said company shall be vested with the right to construct and operate the same, provided it receives consent from the proper local authorities.¹⁸

1498. Increase of Capital Stock.

Whenever any company incorporated under this act shall, in the opinion of the directors thereof, require an increased amount of capital stock in order to complete and equip their road and carry out the full intent and meaning of their articles of association, they shall, if authorized by a majority of the stockholders owning at least a majority of the stock, at a meeting called for that purpose, file with the Secretary of the Commonwealth a certificate, setting forth the amount of such desired increase; and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate: *Provided*, That the or

(17) Sec. 3, Act May 14, 1889, P. L., 211.

(18) Sec. 2, Act May 3, 1905, P. L., 368, amending Sec. 2, Act June 1901, P. L., 518, which amended Sec. 4, Act May 14, 1889, P. L., 211. Sec. 1604.

of stock and increased capital shall in no case exceed
usand dollars per mile of track, except in case of a pas-
ilway operated by other than animal power, in which
aid capital may be not more than one hundred thousand
r mile of track.¹⁹

Power to Borrow Money and Issue Bonds.

resident and directors of any railroad company created
s act shall have power to borrow money, not exceeding
at of capital stock subscribed, and issue the bonds of the
therefor in such amounts as shall not exceed double the
actually paid up, of the capital stock subscribed; the pro-
reof shall be actually expended in the construction and
t of their roads; these bonds to be payable at such times,
ding thirty years after the date thereof, and at such
at such rate of interest, not exceeding seven per cen-
nnum, as said directors may deem best, and may secure
ent of said bonds and interest by a mortgage on said
franchises.²⁰

nds of any corporation, now, or hereafter incorporated
provisions of an act entitled "An act to provide for the
ion and government of street railway companies in this
wealth," approved the fourteenth day of May, Anno
e thousand eight hundred and eighty-nine, and the sev-
dments thereof and supplements thereto, issued in com-
ith law, and after the consent of the persons holding
amount in value of the stock has been first obtained at
held after sixty days' notice given in pursuance of law,
ade payable at such times after their date as the direc-
e said corporation may deem best.^{20*}

Capital Stock.

Capital stock of such company shall be divided into shares

5, Act May 14, 1889, P. L., 211, as amended by Sec. 1, Act
1, P. L., 227. The amendment consists in adding the words
of track." See Sec. 243. This method of increasing capital
ntrary to Article 16, Sec. 7, of the Constitution. See Sec. 1610,

6, Act May 14, 1889, P. L., 211.

ct May 29, 1907, P. L., 308. The sixty days' notice would seem
dition precedent which may not be waived.

of fifty dollars each, and shall be called in and paid at such time and places and in such proportions and instalments, not however exceeding five dollars per share in any period of thirty days, as the directors shall require; of which public notice shall be given for at least two weeks preceding the times appointed for that purpose, in one or more newspapers published in the county where said railroad shall be located; and if any subscriber shall neglect to pay such instalment so called for at the time and place appointed, he, she or they shall be liable to pay in addition to said instalment, at the rate of one per centum per month for the delay of such payment, and if the same and the additional penalty of any part thereof shall remain unpaid for the period of six months he, she or they shall, at the discretion of the directors, forfeit for the use of the company all right, title and interest in and to every share and all share or shares on account of which such default in payment may be made as aforesaid, or the directors may, at their option, cause suit to be brought before any competent tribunal for the recovery of the amount due on such shares, together with the penalty of one per centum per month as aforesaid, and in the event of a forfeiture, the share or shares so forfeited may be disposed of at the discretion of the president and directors under such rules and regulations as may be prescribed by the by-laws. No subscriber shall be entitled to vote at any election, nor at any general or special meeting of the company, on whose share or shares any arrearages may be due more than thirty days next preceding said election or meeting: *Provided*, That no forfeiture of stock shall release or discharge the owner thereof from any liabilities or penalties incurred prior to the time of such forfeiture. When such stock shall have been paid in full the board of directors shall cause certificates for the same to be issued to the parties entitled thereto, signed by the president and countersigned by the treasurer and sealed with the corporate seal of the company, which certificate shall be transferable at the pleasure of the holder on the book of the company, in person or by attorney duly authorized, in presence of the president or treasurer, and the assignee aforesaid shall thereupon be a member of said corporation.²¹

1501. Election of Officers—Special Meetings.

The stockholders of such company shall meet on the second

(21) Sec. 7, Act May 14, 1889, P. L., 211.

in January in every year at their office, of which public notice shall be given at least two weeks previously by the secretary in the manner prescribed in section seven, and choose, by ballot, of the votes present, a president and the number of directors prescribed by the by-laws, not less than four nor more than six for the ensuing year, who shall continue in office until the next annual meeting and until others are chosen, at which annual meeting the said stockholders shall have full power and authority to make, alter and repeal, by a majority of votes given, such by-laws, rules, orders and regulations, and do and perform such other corporate acts as may be deemed advisable. The stockholders may meet at such other times as they may be called by the president and directors, in such manner and upon such notice as may be prescribed by the by-laws. The president, on the request in writing of any number of stockholders representing not less than one-tenth in interest, shall call a special meeting, giving the like notice and stating specifically the objects of the meeting, and such objects and no other business shall be transacted on at such meetings.²²

manner of Conducting Annual Elections.

The method for directors provided for in this act shall be conducted as follows: The directors, at their regular meeting next preceding the times of the annual election, shall appoint three persons to be judges of the said election and to hold the election. The persons so appointed shall not be eligible to an office as director at said election and shall respectively take and subscribe an oath or affirmation before an alderman, justice of the peace or notary public, well and truly and according to law, to conduct such election to the best of their knowledge and ability, and the said judges shall decide upon the qualifications of voters, and when the election is closed shall count the votes and declare the persons elected. Whenever any judge or judges, appointed by the directors, shall fail to attend the meeting of stockholders, and the directors or any board of directors shall neglect or refuse to appoint judges, then and in such case it shall be competent

under this provision, one insertion in one or more newspapers published in the city before the meeting is sufficient. *Weckerly v. Fell*, 8 D. R., 22 Pa. C. C., 209 (1899).

Act of May 14, 1889, P. L., 211.

for the stockholders of such company, at their annual meeting, to supply the vacancy or select proper persons to conduct the election aforesaid. And if, at any time, it shall happen that an election of directors shall not be made at the time specified, the corporation shall not for that reason be dissolved, but it shall be lawful to hold and make such election of directors on any day within three months thereafter, by giving at least ten days' previous notice of the same, in manner aforesaid. In case of the death or resignation of a director, or failure to elect in case of a tie vote the vacancy may be filled by the board of directors. At all elections by the stockholders, each share of stock shall entitle the holder thereof to one vote, and such ballot shall have endorsed thereon the number of shares thereby represented, but no share of shares transferred within sixty days next preceding any election shall entitle the holder or holders thereof to vote at any such election, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been duly executed within three months next preceding such election.²³

1503. Business Statements at Annual Meetings of Stockholders.

At each annual meeting of the stockholders of such company the president and directors of the preceding year shall exhibit to them, a full and complete statement of the affairs and proceedings of the company for such year, with all such matters as shall be necessary to convey to the stockholders a full knowledge of the condition and affairs of said company, and the said president and directors of every such company shall, whenever required, furnish to the Legislature or either branch thereof, a full and authentic report of their affairs and transactions, or such information relating thereto as may be demanded of them.²⁴

1504. Dividends.

The dividends of so much of the profits of such company shall appear advisable to the directors, shall be declared in the months of July and January in each and every year, and be paid to the stockholders or their legal representatives, on application at the office of such company, at any time after the expiration of ten days from the time of declaring the same; but the said d

(23) Sec. 9, Act May 14, 1889, P. L., 211.

(24) Sec. 10, Act May 14, 1889, P. L., 211.

all in no case exceed the amount of the net profits actually by the company, so that the capital stock shall never be thereby, and if the said directors shall make any dividend which shall impair the capital stock of the company, the dissenting thereto, shall be liable in their individual assets to such company for the amount of capital stock so recoverable by action of debt as in other cases, and each present when such dividend shall be declared, shall be deemed as consenting thereto, unless he forthwith enter his name in the minutes of the board and give public notice to the holders of the same.²⁵

office.

Every company organized under this act shall maintain an office at the place where the railroad is located, for the transaction of its business, and transfers of its stock shall be made and books kept for inspection by its stock or bondholders.²⁶

Return to Auditor General (Secretary of Internal Affairs.)²⁷

Whereby made the duty of each railroad corporation incorporated under this act, to make out and return to the Auditor General an annual report, according to a form to be prescribed by the said Auditor General, embracing in detail the operations and affairs of the said corporation during the preceding year, up to and including the thirty-first day of October, and such other information as the said Auditor General shall direct; blank forms for the same to be forwarded by the said Auditor General to such corporations, on or before the first day of October in each year; the said report to be attested by the oath or affirmation of the president or acting superintendent and the treasurer of the corporation, and to be forwarded to the Auditor General on or before the first day of December of each year; every such corporation which shall refuse or neglect to make such report, shall be liable to a penalty of five hundred dollars to the use of the Commonwealth for every such refusal or neglect, to be sued for and recovered as debts of like amounts are or may be by law re-

27

Sec. 11, Act May 14, 1889, P. L., 211.

Sec. 12, Act May 14, 1889, P. L., 211.

Sec. 13, Act May 14, 1889, P. L., 211. The report referred to is evidently the report required to be made to the Secretary of In-

1507. Portion of Track of Other Companies May Be Used.

Any passenger railway company, incorporated under this act, shall have the right to use such portion of the single or double tracks of any other passenger railway company or companies, incorporated under this or any general or special act, as it may require, either to complete a circuit upon its road or upon any of its branches or extensions, or to connect its road with any and all its branches and extensions, or with the road of any other passenger railway company: *Provided*, That there shall be filed with the application for a charter, or for authority to construct a branch or extension, a certified copy of a resolution of the board of directors of the company, whose tracks are to be so used, signifying its consent to such use.²⁸

1508. Consent of Local Authorities—Route to Be Continuous.

No street passenger railway shall be constructed by any company, incorporated under this act, within the limits of any city, borough, or township, without the consent of the local authorities thereof; ²⁹ nor shall any street passenger railway be incorporated hereunder which shall not have a continuous route from the beginning to the end, including connections made with each of its branches and extensions, or they with each other, and including the use of the track of other companies, with the consent thereof as authorized under section fourteen as herein amended.³⁰

1509. When Construction to Begin.

Any company proposing to construct a street railway, or a branch or extension thereof, under the provisions of this act, shall in good faith commence the construction thereof within one year after the consent of the proper local authorities of the city, borough or township within which the same is located shall have

Internal Affairs for statistical purposes. The draughtsman of this act probably followed the Act of April 9, 1870, P. L., 61, overlooking the fact that the duties imposed by that act were transferred to the Secretary of Internal Affairs by Acts of May 13, 1889, P. L., 202, and April 19, 1897, P. L., 25.

(28) Act May 3, 1905, Sec. 3, P. L., 368, amending Sec. 3, Act June 1901, P. L., 519, which amended Sec. 14 of the Act May 14, 1889, P. L., 211. There was a prior amendment of May 21, 1895, P. L., 94, Sec. 1. See Sec. 1592.

(29) See Sec. 1485.

(30) Sec. 4, Act May 3, 1905, P. L., 368, amending Sec. 3, Act June 1901, P. L., 521, which amended Sec. 15, Act May 14, 1889. There was a prior amendment of May 21, 1895, P. L., 94. See Sec. 1592.

ained, and shall be completed within two years there-
less the time shall be extended by the authority afore-

Laying Out and Use Turnpikes.*

passenger railway incorporated under this act shall have,
ereby granted, power, by its officers and servants to as-
nd define such route as they may deem expedient, over,
ross and along any turnpike or turnpikes, or portion
not already occupied, and not, however, exceeding suffi-
th for two tracks to be laid down on, over, across and
ch turnpike or turnpikes, or portion thereof; and there-
over, across and along such turnpike or turnpikes, or
hereof, to lay down, construct and establish a track or
r its use in the transaction of its business; and thereupon
e same in its general business: *Provided*, That the con-
ne owners of the underlying fee shall have first been ob-
And provided further, That before such passenger rail-
pany shall enter upon and use any such turnpike or turn-
portion thereof, in the laying of tracks and use of the
shall make compensation to the turnpike company for such
on and use of said turnpike or turnpikes, or portion there-
ase the parties cannot agree as to the amount of compen-
be paid, then the Court of Common Pleas of the proper
upon the petition of the corporation seeking the privilege,
oint five persons to view the premises, and assess the
ation for the use of such turnpike or turnpikes, or por-
eof. The jury so appointed shall hear the testimony, and
ke a report to the court, assessing the damages which the
pike company shall be paid for the use of the said turn-
d, or portion thereof; and if no appeal shall be taken from
report, the court shall, at the expiration of thirty days,
the said report; and the amount so fixed by the jury shall
with due and payable: *Provided, however*, That either
all have the right of appeal, within the said thirty days,
e award of the jury, as now provided by law. If the cor-
seeking to use said turnpike road or portion thereof
dissatisfied with such award, and shall appeal therefrom,

ec. 16, Act May 14, 1889, P. L., 211.

ec. 1595.

it shall nevertheless have the right to immediately use the same upon paying the amount of such award into court, to await the determination of such appeal. If such turnpike company shall appeal from such award, the corporation seeking to use such turnpike road, or portion thereof, shall enter security in such amount as the said court shall direct and approve; whereupon, such security being entered, the company so entering the same shall have the right to the immediate use of such turnpike, turnpikes, or portions thereof.³²

1511. May Cross Railroads at Grade.

Any company incorporated under the provisions of this act shall have the right, in its construction, to cross at grade, diagonally or transversely, any railroad operated by steam or otherwise, now or hereafter built.³³

1512. Right to Use of Streets—Penalty for Obstructing Movement of Cars.

Street passenger railway companies in operating their roads shall have the right to the street, and any wilful obstruction of the passage of their cars on their way between the stations, shall be punishable, on conviction before any magistrate, by a fine not more than ten dollars for each offense, to be recovered by the fines of like amount are now by law recoverable.³⁴

1513. Acceptance of This Act.

Any company heretofore incorporated under the provisions of an act relating to government of street railway companies in cities of the third, fourth and fifth classes, and in the boroughs and townships in the Commonwealth, approved twenty-third day of May, Anno Domini one thousand eight hundred and seventy-eight, and under the provisions of an act relating to the government and regulation of street railway companies in cities of second and third class, in this Commonwealth, approved nineteenth day of March, Anno Domini one thousand eight hundred and seventy-nine, or any street passenger railway company

(32) Sec. 7, Act May 3, 1905, P. L., 378, amending Sec. 17, Act May 1889, P. L., 211. See Sec. 1595.

(33) Sec. 18, Act May 14, 1889, P. L. 211. See Sec. 1598.

(34) Sec. 19, Act May 14, 1889, P. L., 211.

existing under color of any charter or letters patent Commonwealth, upon accepting the provisions of this act, under the seal of the corporation, filed in the office of the Secretary of the Commonwealth, shall thereupon become and be incorporated hereunder, and shall be entitled to and have the benefit of all the privileges, franchises and powers conferred upon corporations to be created under this act, and all the properties, rights and privileges belonging to such corporations heretofore acquired by gift, grant, conveyance, munificence, assignment or otherwise, shall be and are hereby approved, confirmed and assured to such corporation, with full effect and to all intents and purposes, as if the same had been originally acquired by and under authority of this act, and such corporation shall thereafter be governed solely by the provisions of this act, and the Governor shall forthwith cause new charters to be issued under this act to issue to such corporation under the same name as the company had in the charter under which it was originally incorporated: *Provided*, That such company shall be subject to all the contracts, duties and obligations, thereon existing upon it or to which said company shall then be in law liable.³⁵

to Carry U. S. Mails.

That any company now or hereafter incorporated under the provisions of an act entitled "An act to provide for the incorporation of street railway companies in this Commonwealth," approved May 14, Anno Domini one thousand eight hundred and eighty-nine, in addition to conveying passengers, shall also have the right and authority to contract for and to locally gather, collect and distribute the mails of the United States.³⁶

Abandonment of Portion of Routes.

That any company incorporated under the provisions of an act, entitled "An act to provide for the incorporation and government of street railways in this Commonwealth," approved May fourteenth, Anno Domini one thousand eight hundred and eighty-nine, is authorized and empowered, by contract with the local authorities, but not otherwise, to temporarily abandon, or to post-

³⁵ 20, Act May 14, 1889, P. L., 211.

³⁶ 3, Act May 1, 1895, P. L., 95.

pone the exercise of its franchise over, the whole or a portion of its route, under such terms and conditions as may be agreed upon between such company and the said local authorities, a duplicate of which contract shall be filed in the office of the Secretary of the Commonwealth: *Provided, however,* That nothing in this section contained, nor any contract made in pursuance thereof, shall be construed to limit or affect in any way, or impose any additional liability for the exercise of the right of a steam railroad company to lay its tracks over, upon, under and across such street or streets, or portions thereof; and in case any company not having received consent to so temporarily abandon or postpone the exercise of its franchise over the whole or a portion of its route, fails to complete its whole route during the time limited by the local authorities, it shall be deemed to have permanently abandoned the portion not so completed; but the said company shall have authority to maintain and operate the portion completed, provided it constitutes, either by itself or with portions of the tracks of other companies which it may be authorized to use, a complete circuit for its cars.³⁷

1516. Application for Local Consent to Be Made Within Two Years

—Road to Be Completed Within Five Years.

Any company which does not, within two years from the date of its incorporation, make formal application to the local authorities of the proper city, borough or township for leave to occupy and use the streets, highways, or bridges which, by its charter, it is authorized to occupy and use, and any company which heretofore has obtained or hereafter does obtain legislative or municipal consent to occupy and use any streets, highways, or bridges and does not forthwith diligently proceed to occupy and use the same, and does not begin work within two years after such consent shall be obtained, and complete its road, or a portion thereof as herein provided, within the time limited by such consent, any extension thereof, shall be deemed to have abandoned its right to occupy and use such streets, highways, and bridges not so used; and the same may be occupied and used by any other company, duly chartered and obtaining consent so to do: *Provided, however,* That no company shall be privileged to use any street

(37) Sec. 5, Act May 3, 1905, P. L., 376, amending Sec. 5, Act June 1, 1901, P. L., 521, which amended Sec. 4, Act May 1, 1895, P. L., 95.

ly abandoned, or the use of which is temporarily post-
in accordance with the provisions of this act or of any
of the general assembly.³⁸

Right to Acquire Property and Lay Tracks Thereon.

Street railway company, incorporated under this act, shall have
the right and power, if it deem it to be necessary in order to
make connections with any portion of its track, whether main
tracks or extensions, to acquire property, either by purchase
or otherwise; and after acquiring such property, shall have
the right to lay its track upon the same as if it were a public high-
way to connect the track, so laid upon the property so ac-
quired with any other portions of its track laid upon public
land adjacent thereto.³⁹

Street Railway Company Not to Connect Tracks With Any Railroad Tracks.

A street passenger railway company heretofore or hereafter
incorporated under the act hereby amended, shall be authorized
to connect its tracks with the tracks of any railroad
company incorporated under any law of this state for the trans-
portation of both passengers and freight, nor shall the interchange
of such street passenger railway company and such rail-
road company be authorized and permitted.⁴⁰

**Street Railway Companies May Acquire Private Property on
Which to Construct Tracks.**

A street railway company heretofore incorporated, or here-
after incorporated, under the act, entitled "An act to pro-
vide for the incorporation and government of street railway
companies in this Commonwealth," approved the fourteenth day
of January, Anno Domini one thousand eight hundred and eighty-
three, and the several supplements and amendments thereto, shall
have the right and power, if it deem it necessary, in order to
cross, over, or under, steep grades, streams, public bridges, or grade
crossings over other railroads, or to better facilitate the operation

³⁸ Act May 3, 1905, P. L., 368, amending Sec. 6, Act June 7,
1901, P. L., 521.

³⁹ Act June 7, 1901, P. L., 521. See Sec. 1519.

⁴⁰ Act June 7, 1901, P. L., 521.

of its railway, or to better secure the safety of persons and property, to acquire and occupy, according to the discretion of its directors, private property for laying down track, and to divert its route and tracks from any public highway to such private property or properties, and to return to any such highway, whenever and as often as such railway company may, for any such purpose, deem it expedient so to do: *Provided*, That this act shall not be construed to confer upon any such company the right of eminent domain.^{40*}

1520. Right of Eminent Domain Conferred on Street Passenger Railways—Exercise of Right.^{40}**

Every corporation now or hereafter chartered under the provisions of the act, entitled "An act to provide for the incorporation and government of street railway companies in this Commonwealth," approved the fourteenth day of May, Anno Domini one thousand eight hundred and eighty-nine, and the several amendments thereof, and the supplements thereto, may locate or relocate its tracks and lines of railway so that the same may lie in whole or in part on a public highway, or in whole or in part over private property; and shall have the right of eminent domain which is hereby conferred; and by virtue of such right may take and occupy so much land or material as may be necessary for the location, construction, and operation of its railway, either as an extension or relocation of an existing line, or as a new line, which land shall not exceed forty-five (45) feet in width, excepting where a greater width shall be required for the slopes of cuts and embankments; and such easements in lands lying within or without the limits of any street, road, lane, alley, or other highway as may be necessary for the accomplishment of the objects of said corporations; and also such lands or materials as may be required for the purpose of locating and constructing all turnouts, poles, stations, power-houses, car-barns, lines for the transmission of power, and all necessary works and buildings, conveniences, and equipments for the construction and operation of machinery, engines, boilers, or appliances—including the erection of poles for the support of wires, and conduits or the making of tunnels or subways—for the production or supply of the motive power used by said company in the operation of its railway.

(40*) Act June 12, 1907, P. L., 526. See Sec. 1517.

(40**) The Act of May 14, 1889, did not confer the right of eminent domain. *Heilman v. Lebanon & Annville Ry. Co.*, 10 Pa. C. C., 241 (189

the lines for the transmission of such power be parallel to the said railway or divergent therefrom: *Provided*, That the right of way for any such divergent transmission line shall be not less than sixteen and one-half ($16\frac{1}{2}$) feet in width: *And provided* further, That in all cases, just compensation for all property taken by the construction and operation of the railway and all damages shall be made: *And provided further*, That no cemetery, place of public worship, or dwelling-house which is the principal home in the occupancy of the owner thereof, or the curtilage thereto, shall be taken; excepting that so much curtilage may be taken, for the widening of any right of way owned by a street railway company, as may be required to give the said right of way to a total width not exceeding thirty feet, exclusive of the slopes, cuts, and embankments: *Provided further*, That before the right of eminent domain conferred shall be exercised upon any highway in any town or city, excepting for the purpose of crossing such highway, the consent of the owners of at least fifty-one (51) per centum of the frontage of the entire distance to be traversed longitudinally of such highway in said township, shall be obtained: *And provided further*, That the consent of the local authorities shall be obtained and obtained before the occupation of the streets and highways in any city, borough, or township: *Provided further*, That street railway companies that shall avail themselves of the right of eminent domain shall be common carriers of express and mail, farm produce, garden-truck, milk, merchandise, and other goods, and property.⁴¹

Proceedings Where Compensation Cannot Be Agreed Upon.

When such corporation cannot agree with the owner of any land, or material, so about to be taken or injured, as to the compensation to be paid by such corporation to said owner, the corporation, before entering upon the said land, shall tender a bond with at least two sufficient sureties, to said property owner, for the payment of such amount of damages as the owner shall be entitled to receive after the same shall be agreed upon between the parties, or assessed in the

⁴¹ Act June 1, 1907, P. L., 368. See proviso to Act June 12, 1907,

manner provided for in this act, whether the sum exceeds the amount of penalty in the bond mentioned or not: *Provided*, That in case the said property owner shall refuse or decline to accept the bond so tendered, the corporation shall then give the said property owner a written notice of the time when the same will be presented for filing in court; and thereafter the said corporation may present said bond to the Court of Common Pleas of the county wherein the land about to be entered upon is situated, and if the bond and sureties are approved, the bond shall be filed in said court, for the benefit of those interested; and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution upon any judgment therefor; and after the approval of said bond, the said corporation may enter upon the said lands and begin the work of construction. The execution and filing of said bonds shall not relieve said corporation from the payment of the entire amount of damages which shall be awarded to any property owner; and such owner may recover, by an action of ejectment, the possession of the property taken, unless said damages are paid in full.⁴²

1522. Appointment of Viewers—Assessment of Damages—Appeal

In all cases in which such corporation cannot agree with any property owner as to the proper compensation to be paid for the interest in the real estate, land, or material taken or injured, the Court of Common Pleas of the county in which the land is situated, on application thereto by either said corporation or the said property owner, shall appoint five discreet and disinterested freeholders of said county as viewers, and appoint a time, not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained or the property to be taken or injured, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, or any three of them, having been first duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters and things to be submitted to them, in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, shall es-

(42) Sec. 2, Act June 1, 1907, P. L., 368.

and determine the quantity, quality, and value of the real and or material so taken or injured, or to be taken or injured, and having due regard to, and making just allowance for, advantages which may have resulted, or which may seem likely to result, to said owner in consequence of the taking or injury of said estate; and, after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and, if any, what amount of damages have been sustained, and to whom payable, and make report thereon to said court; and if any damages be awarded, and the report confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon for the sum so awarded, and the costs and expenses incurred by said corporation; and each of said viewers shall be entitled to five dollars per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation: *Provided*, That either party shall have the right of appeal from the report of said viewers to the said Court of Common Pleas, within thirty days after confirmation of the report, and the appeal shall be tried by a jury, as in similar cases; but the costs of the appeal shall be paid by such corporation. After final judgment, either party may appeal therefrom to the Superior Court or the Supreme Court, as the case may require.

Proceedings in Cases of Disputed Title.

In any case where any street railway company has or shall have authority under this act to take and appropriate lands, and in any case where such company is or shall be required to give security for the payment of damages to or for the taking of land, and when such case shall be made known to the Court of Common Pleas of the county, by petition, affidavit or otherwise, that there is a doubtful, doubtful or defective title, or that any party interested in the land is absent, unknown, covert, not of full age or of unsound mind, or from any cause cannot be bargained with or served with notice or have a bond tendered to them within the county where the land is situated, the court which shall have jurisdiction in such case may appoint viewers and assessors of damages.

in such case shall, on application of such company, direct the giving of a bond, conditioned as provided in section two hereof, the Commonwealth of Pennsylvania, in an amount and with security to be approved by the court, for the use of the persons who may be found to be entitled to the damages for taking and appropriation of such land, or for damage or injury to such land; and when such bond shall be approved and filed, and when, upon the petition of such company, viewers to assess the said damages shall be appointed, the said court shall direct notices of the approval and filing of said bonds and of the appointment and time and place of meeting of said viewers, respectively, to be published in two newspapers, published in the county where the land is situated, if two are published, once a week for three weeks after the bond is filed and before the day appointed for the meeting of the viewers; and the bond so filed, and notices so published, shall have the like effect as if the said bond had been given and tendered to the parties entitled, and as if personal notice had been served on the party or parties owning and claiming such lands: *Provided*, That when the residence of any such parties shall be known to such company, a marked copy of such notice shall be sent to them by mail, or otherwise.⁴⁴

1524. Appointment of Trustee or Guardian ad Litem.

It shall be the duty of the court having jurisdiction of the appointment of viewers and assessment of damages, at the time of the application of such company for the appointment of viewers, to appoint a guardian ad litem or trustee, as the circumstances of the case shall require, for such interested party who is absent, unknown, covert, not of full age or of unsound mind, or for any cause cannot be bargained with or served with notice or has no bond tendered to them, and such guardian ad litem or trustee shall represent the interests of the person of whom he is guardian ad litem or trustee in all subsequent proceedings.⁴⁵

1525. Proceedings When Property Is in Two or More Counties

Whenever a street railway is located or constructed over land upon a property situate in two or more counties, the Court of Common Pleas of either county may take jurisdiction of the p

(44) Sec. 4, Act June 1, 1907, P. L., 368.

(45) Sec. 5, Act June 1, 1907, P. L., 368.

to assess damages; and the first of the said courts, to application for any such proceedings shall be made, shall jurisdiction to the exclusion of the others.⁴⁶

Proceedings When Railway Crosses Private Property.

ever the right of way of any street railway company, authorized to exercise the right of eminent domain under this act, crosses private lands, the Court of Common Pleas of the county in which such lands are situated may, upon petition of the owner of such lands, and proof of the necessity thereof, order and decree that said railway company shall properly fence in the right of way of said company and erect gates at all private-way crossings, and keep said fences and gates in good order and repair; and said court may require a bond, with surety, to be filed by the court, to be filed for faithful compliance with the decree.⁴⁷

Right to Transport Express Matter and Light Freight Conferred Upon All Street Railways.

Right and privilege to do an express business, and to transport and carry farm produce, garden truck, milk, merchandise, and light freight and property, upon, along, and over all street railways, and to charge and collect a reasonable compensation therefor, is hereby extended to and conferred upon all street railway companies, including every kind of street railway, suburban street railway, or interurban street railway, whether their lines may be on the surface or below the surface of the earth, and by whatever power and vehicles are to be and are transported, and upon all companies authorized to become the lessees or operators of such lines, heretofore or hereafter incorporated under the laws of this Commonwealth, even though the said street railway companies have been heretofore restricted as to the kind of power employed or in such transportation, or may have been forbidden to transport freight or other property: *Provided*, That the transportation of said express matter, light freight, and property and other articles of merchandise mentioned in this act, shall be subject to such reasonable regulations as shall be prescribed

Sec. 6, Act June 1, 1907, P. L., 368.

Sec. 7, Act June 1, 1907, P. L., 368.

by the respective local authorities of the several cities, boroughs and townships through which or within which any street railway company may exercise the rights and privileges conferred by this act: *And provided further*, That the reasonableness of such regulations shall be subject to the supervision of the Court of Common Pleas of the county or counties through which or within which any street railway company may exercise the rights and privileges conferred by this act, the jurisdiction of which court shall be invoked by petition of the complaining party or parties.

1528. Regulation of Maximum Rate of Fare to Be Charged by Street Railway Companies in Cities of the Second Class.

On and after the passage of this act, no company or corporation operating a street railway in this Commonwealth shall demand or receive more than the sum of five cents per trip, or passage from each passenger on said railway, within the corporate limits of any city of the second class in this Commonwealth, for a continuous ride in one car.^{41*}

Any officer, director, or employe of such company, operating as aforesaid, who shall violate the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding the sum of five hundred dollars, for each and every offense, and to undergo an imprisonment not exceeding one year, either or both, in the discretion of the court.^{41**}

The foregoing act is constitutional. *Ashworth v. Pittsburgh Railways Co.*, 17 D. R., 128 (1907).

ELEVATED OR UNDERGROUND OR PARTLY ELEVATED AND PARTLY UNDERGROUND RAILWAY COMPANIES WITH SURFACE RIGHTS.

(ACT OF JUNE 7, 1901, P. L., 523.)*

1529. General Powers.

Any number of persons not less than five, three of whom shall be citizens of this Commonwealth, may form a company for the purpose of construction and operation of passenger railways, either elevated or underground, or partly elevated and partly underground.

(48) Act April 22, 1907, P. L., 96.

(41*) Sec. 1, Act June 7, 1907, P. L., 453.

(41**) Sec. 2, Act June 7, 1907, P. L., 453.

*See Sec. 1613.

and for the transportation of passengers and with power and authority to contract for and to locally gather, carry and deliver the mails of the United States, and with power to construct such portion thereof upon the surface as may be reasonably necessary for terminals or connections between the underground and elevated sections thereof: *Provided, however,* That the surface occupied shall not exceed two thousand five hundred feet in any one place which said railways may be constructed upon, over, under, across, through, and along any highway or bridge in this Commonwealth, upon which no other structure incorporated under this act is already erected or constructed, and in constant daily use for the transportation of passengers, or authorized to be erected or constructed under any charter issued under this act, and for which permission to construct the same has been obtained from the local authorities of the city, borough or township in which the same is located, within two years, with the privilege of occupying so much of the said streets, highways or bridges mentioned in their charters as may be necessary for the erection and operation of said railways for public use, in the conveyance of passengers, by such power, other than steam, as may be adopted from time to time, and said companies may build and operate on, over, under, across, through, and along streets, highways and bridges in which passenger railways are constructed or authorized to be constructed upon the surface of the street and may use and occupy the same to the extent of two thousand five hundred feet, as provided.⁴²

Certificate of Incorporation.

The charter of such intended corporation shall be subscribed by at least three of the incorporators; who shall certify, in writing to the Governor, the name of the company; the number of shares of the same is to continue; the length of road, as near as may be, to be constructed; the route and character of construction; the amount of capital stock of the company, which shall not be less than fifty thousand dollars for every mile of road proposed to be constructed; and the number of shares and the par value of each; the names and places of residences of the president and board of directors, who shall manage its affairs until the first annual meet-

ing thereafter, and until others are chosen in their places. Each subscriber shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in said company. On compliance with the preceding provisions of this section, the articles of association shall be acknowledged by at least three of the directors, before some officer competent to take acknowledgment of deeds, and may be filed in the office of the Secretary of the Commonwealth, who shall endorse thereon the day on which they were filed, and record the same in a book to be provided by him for such purpose. Thereupon the Governor shall issue his letters patent, creating the persons who have subscribed such articles of association, and all persons who shall become stockholders in such company, a corporation, by the name specified therein, which shall possess the powers and privileges following, namely:

First. To have succession, by its corporate name, for the period limited in its articles of association.

Second. To sue and be sued, complain and defend, in any court of law or equity.

Third. To make and use a common seal, and alter the same at its pleasure.

Fourth. To take, hold, purchase, operate, lease and convey such real and personal property, estate and franchises as the purposes of the corporation shall require.

Fifth. To appoint such officers and agents as the business of the corporation shall require.

Sixth. To make by-laws, not inconsistent with the Constitution or any existing law, for the government of its property and regulation of its affairs, and for the transfer of its stock.

Seventh. To sell or lease its road and franchises, or part thereof, to traction or motor power companies or to other passenger railway companies, or to acquire the roads, property and franchises of other passenger railway companies, by lease or purchase. But no company incorporated under this act shall be authorized or permitted to connect its tracks with the tracks of any railroad company, incorporated under any law of this State for the transportation of both passengers and freight, nor shall there be interchange of cars and continuous movement thereof between and over the tracks of any railway company incorporated under this act and such railroad company be authorized or permitted

\$25,000 for Each Mile of Proposed Road to Be Subscribed.

articles of association shall not be filed and recorded in the office of the Secretary of the Commonwealth until at least five thousand dollars of stock for every mile of road proposed to be constructed shall have been subscribed thereto, and one per centum paid thereon in good faith and in cash to the directors named in said articles of association; nor until there is filed thereon or annexed thereto an affidavit, made by at least one of the directors named in said articles, that the amount required by this section has been in good faith subscribed, and one per centum paid in cash thereon, as aforesaid, and that it is intended in good faith to construct and to maintain and operate the road mentioned in said articles of association, which affidavit shall be recorded with the articles of association, as aforesaid.⁴⁴

Payment of Subscriptions to Stock—Stock Certificates.

Subscriptions to the capital stock of such corporations shall be payable at such times and places and in such proportions and instalments as the directors shall require, of which public notice shall be given, for at least two weeks preceding the time fixed for the purpose, in one or more newspapers published in the county; and if any subscriber shall neglect to pay such instalment, so called for, at the time and place appointed, he, she or they shall be liable to pay, in addition to said instalment a penalty at the rate of one per centum per month for the delay; and if the same and the additional penalty, or any part thereof, shall remain unpaid for the period of six months, he, she or they shall, at the discretion of the directors, forfeit, for the use of the corporation, all right, title and interest in and to every and all stock, of the amount of which such default in payment may be made, as aforesaid; or, the directors may bring suit to recover the amount due together with the penalty. In the event of forfeiture, the shares so forfeited may be disposed of at the discretion of the president and directors, under such rules and regulations as may be prescribed by by-laws; but no forfeiture of stock shall release the owner from any liabilities or penalties incurred prior to the forfeiture. When stock shall have been paid in full, the directors shall cause certificates for the same to be issued to the parties entitled thereto, signed by the president and coun-

tersigned by the treasurer, and sealed with the corporate seal, which certificates shall be transferable at the pleasure of the holder on the books of the company, in person, or by attorney duly authorized, and the assignee shall thereupon be a member of such corporation. Companies incorporated under this act may issue either preferred or common stock, or both, as may be considered advisable.⁴⁵

1533. Increase of Capital Stock.

Whenever any company incorporated under this act shall, in the opinion of the directors thereof, require an increased amount of capital stock, in order to complete and equip its road and carry out the full intent and meaning of its articles of association, it shall, if authorized by a majority of the stockholders voting at a meeting called for that purpose, which call shall be in the manner provided by the Constitution and laws of this State, file with the Secretary of the Commonwealth, a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have such increased capital as is fixed by such certificate.⁴⁶

1534. Power to Borrow Money and Mortgage Property.

The president and directors of any company created under this act shall have power to borrow money, not exceeding the amount of the capital stock authorized to be issued, and issue the bonds or obligations of the company therefor, in such amounts, and at such times and upon such terms, and at such times as the directors shall deem best, the proceeds whereof shall be expended in the construction and equipment of their railways; these bonds or obligations to be payable at such times, and at such place, and at such rate of interest, as said directors may deem best, and may secure the payment of said bonds or obligations and interest by a mortgage or mortgages on the said railways and franchises.⁴⁷

1535. Annual Meetings.

The stockholders of such corporations shall hold annual meetings for the purpose of electing a president and board of directors.

(45) Sec. 4, Act June 7, 1901, P. L., 523.

(46) Sec. 5, Act June 7, 1901, P. L., 523.

(47) Sec. 6, Act June 7, 1901, P. L., 523.

on such date as may be fixed by the by-laws, and special meetings may also be called as prescribed by said by-laws. At all elections, each stockholder shall be entitled to one vote for each share of stock held in the company; but no share of stock held less than sixty days of the said election shall entitle the holder to vote on the same; nor shall any proxy be received, or the holder to vote, which shall have been executed more than three months preceding such election; and no stockholder shall be entitled to vote any shares, at any election, in case any assessments of any assessment shall be due on such share or shares more than thirty days prior to such election.⁴⁸

Right of Eminent Domain.

Corporations created under this act shall, for the purpose of constructing the railways herein authorized, and the necessary tracks and approaches thereto as herein provided, have the right of eminent domain, which is hereby expressly conferred, and may erect, maintain, and operate their railways, stations and approaches thereto, on, under, over, across, through and along any highway or bridge, or on, over, under, across, through any lands and tenements in private ownership; and may fix and determine such route for the railway as the board of directors may deem expedient, on, under, over, across, through any street, highway, bridge or private property, not passing through any burying-grounds or place of worship, and thereon may erect, construct, establish and operate a railway, with such stations and approaches as they may deem necessary; and, in like manner, by themselves or other persons appointed, may enter upon and into, and occupy, take and acquire, all land and buildings which may be necessary for the construction of railways, stations or approaches, or other needful buildings and appurtenances, or convenient for the construction and maintenance of the same. Such corporations, however, shall in no case make just compensation for all property taken, injured or destroyed by the construction or enlargement of their railway. Any parties claiming compensation and the said corporation, so created under this act, shall not be able to agree as to the amount of compensation to be paid by reason of the construction, maintenance or operation of said road, then the Court of Common

Pleas of the proper county, upon petition of any person in interest, shall appoint five persons to view and assess the compensation due to all persons, corporations or bodies politic that have failed to agree with the corporation so chartered, by reason of the construction, maintenance and operation of the said road and its branches, or of its stations and approaches thereto, and make report thereof to the court. Any party dissatisfied with the report shall have the right of appeal to the Court of Common Pleas in which the said report shall have been filed, and thereupon the amount of compensation shall be determined by a jury, on issues properly framed, according to the course of the common law, subject to such rules and regulations as the said court may prescribe. Where any such corporation desires to proceed with the construction or operation of its railway before the compensation shall be determined and paid, it may do so, provided it shall first give bond to the Commonwealth of Pennsylvania, for the use of the parties interested, in such amount and with such sureties as the Court of Common Pleas, of the proper county, having jurisdiction of the matter, may direct.⁴⁹

1537. Office.

Every company organized under this act shall maintain an office within this State for the transaction of its business. When transfers of its stock shall be made, and books kept for inspection by its stockholders or bondholders.⁵⁰

1538. Use of Property of the Commonwealth.

Every company incorporated under this act shall have authority to use so much of the streets, highways and bridges of this Commonwealth, immediately adjacent to their tracks, as may be necessary and proper, either for the erection of stations or the proper necessary and convenient approaches thereto, or both; but in the case of elevated roads, all stations must be on a level with the tracks; all of which, however, shall be erected and maintained and operated subject to all rules and regulations which may be made or passed by the local authorities of any city, borough or township, through which the said road may run, in regard to the same.⁵¹

(49) Sec. 8, Act June 7, 1901, P. L., 523.

(50) Sec. 9, Act June 7, 1901, P. L., 523.

(51) Sec. 10, Act June 7, 1901, P. L., 523.

Branches and Extensions—Abandonment of Lines.

Companies incorporated under this act may construct branches and extensions, but in that case shall first file in the office of the Secretary of the Commonwealth a resolution of the board of directors, approved by the stockholders, giving the details of such branches and extensions; and every company incorporated under the provisions of this act is hereby authorized and empowered, with the consent of the local authorities of any city, town or township within which said railway is located, to acquire any portion of its road, without prejudice to its right to construct, complete and operate the remaining portion of its railway. Any such action of its board of directors, with the approval of a majority of its stockholders present at a meeting to be called for that purpose, after thirty days' notice, and accompanied by a copy of such action, duly certified by the president or secretary, under the seal of the company, in the office of the Secretary of the Commonwealth, and also with the proper local authorities.
s. 51*

Use of Tracks of Other Companies.

Any company incorporated under this act shall have the right to use any part or all of the tracks or railway of any other company incorporated under this act, with the consent of such other company, to be expressed by a resolution of its board of directors, ratified by a vote of a majority in value of the stock of such other company, and such use may be exclusive or non-exclusive, as the said companies may determine.
e. 51**

Merger With Other Street Railway Companies.

Companies incorporated under this act shall have the right to merge their several rights, privileges and franchises with any other companies, so incorporated, whenever in the opinion of the board of directors and stockholders of such companies it shall be for their best interest; but such merger shall not take place until a resolution to that effect shall have been adopted by the boards of directors of the companies to be merged.

Act March 25, 1903, P. L., 52, amending Sec. 11, Act June 7, 1901,

Act March 25, 1903, P. L., 52, amending Sec. 11, Act June 7, 1901,

rectors of the respective companies desiring to so merge, and such action shall have been approved by a majority in value of the stockholders of such company. Whenever two or more roads shall be so merged, the commencement of work, in good faith upon any part of the route of any such merged roads shall be held to be a commencement upon all the merged lines or roads within the meaning of this act, and a compliance with the provisions hereof as to the time within which work must be commenced: *Provided, however,* That the work shall be completed within five years upon all the said merged roads, unless the time for such completion shall be extended by the proper local authorities of the city, borough, or township within which the said roads are located.⁵²

1542. Time for Construction.

Any company proposing to construct a railway or any branch or extension thereof, under the provisions of this act, shall in good faith commence the construction thereof within two years after the consent of the proper local authorities of the city, borough or township, within which the same is located, shall have been obtained; and the same shall be completed within five years thereafter, unless the time shall be extended by the authority aforesaid. Whenever a charter shall be granted to any corporation to build a road as provided by this act, no other charter to build a road on, over, under, across, through, or along the same streets, highways, bridges or property shall be granted to any other company, within the time during which, by the provisions of this act, the company first securing the charter has the right to commence and complete its work: *Provided,* That the consent of the local authorities shall be promptly applied for, and shall have been obtained within two years from the date of the charter.⁵³

1543. Increase of Capital Stock.

Any corporation chartered under this act shall have the right from time to time, to increase its capital stock, and to issue and sell stock and bonds or other obligations, to such an amount

(52) Act March 25, 1903, P. L., 52, amending Sec. 11, Act June 7, 1901, P. L., 523.

(53) Sec. 12, Act June 7, 1901, P. L., 523.

h terms, as shall be deemed proper to enable them to the duties of their organization.⁵⁴

Use of Turnpikes.

company incorporated under this act shall have power, by its officers and servants, to construct and operate its road as authorized by this act, on, over, under, across, through, and along any highway, public or private, or any turnpike or turnpikes, and to use the same for its general purposes, and, in addition to the space so occupied by its tracks, to occupy so much of the space on, over, under, across, through, or along any such turnpikes as may be necessary for the erection of stations and approaches thereto: *Provided, however,* that the company shall make or secure compensation to the owner or owners of any such turnpike for such occupation and use, in the mode provided in section eight hereof.⁵⁵

Any Bridge or Tunnel Water Courses.

the construction of any railway, incorporated under this act, shall become necessary to cross any river or rivers, creeks or water courses within this State, the said company shall have power and authority to bridge or tunnel the same. The route and method of construction, or both, as described in the charter of any company incorporated under this act, may be changed, with the consent of the local authorities of the proper city, borough or town, and, in that case, if the company shall accept such change, the resolution of the board of directors, setting out the change and the authority therefor, shall be filed in the office of the Secretary of the Commonwealth. Such change shall only be made when it has been approved by a majority of the stockholders, voting at a meeting called for the purpose of considering such change.⁵⁶

Elevated and Underground Passenger Railways to Be Incorporated Only With Consent of the Governor, Secretary of the Commonwealth and Attorney General.

no letters patent shall be issued to any company, nor shall any corporation be otherwise created, for the construction of any elevated or underground, or partly elevated and partly

13, Act June 7, 1901, P. L., 523.

14, Act June 7, 1901, P. L., 523.

15, Act June 7, 1901, P. L., 523.

underground, passenger railway, except the same shall be located upon, over, under, across, through or along a street, road or highway in a thickly populated locality, where the surface travel is congested; nor unless and until the necessity for the construction and operation of said railway shall have been passed and approved by a board, consisting of the Governor, the Secretary of the Commonwealth and the Attorney General, after thirty days' public notice, published as shall be prescribed by said board.⁵⁷

1547. Companies Chartered to Build Underground Roads May Build Elevated Ones and Vice Versa.

Any company chartered to build either an elevated or an underground railway, under the provisions of the act entitled "An act to provide for the incorporation and government of passenger railways, either elevated or underground, or partly elevated and partly underground, with surface rights," approved June seven one thousand nine hundred and one, shall have power and authority hereby authorized to build either an elevated or an underground railway, or both an elevated and an underground railway, on the route described in their charter, having first obtained the consent of the local authorities of the city, borough or township through which the said railway is located.⁵⁸

MISCELLANEOUS PROVISIONS.

1548. Local Authorities May Contract With Street Railway Companies to Remove Tracks and Change Routes.

In case the local authorities of any city, borough, or township shall deem it necessary for the public benefit and convenience to secure the removal of any street railway tracks already laid, to prevent the laying of such tracks already authorized to be laid or to change the route of any street railway on any street, streets, or portion of a street or streets, within its corporate limits, and such purpose or purposes can be accomplished by agreement with the street passenger railway company or motor power company owning, leasing or operating such tracks, it shall

(57) Act June 20, 1901, P. L., 577.

(58) Act June 19, 1901, P. L., 572.

lawful for the said parties to enter into a contract, for a not exceeding fifty years, for such considerations and upon such terms and conditions, and containing such stipulations, reservations and covenants as may be agreed upon between the respective parties thereto; and such contract may include a covenant providing that, during the continuance thereof, municipal franchises shall not be granted to any other company to use or occupy any street, streets, or portions of a street or streets, covered by such contract, for street railway or passenger transportation purposes; which covenant shall be enforceable by bill in equity in any such city, borough, or township, in case of attempted violation thereof; and such contract may also provide for the laying out and laying of such tracks, upon such terms and under such franchises and conditions as may be agreed upon. When such contract shall have been made, it shall form a part of the charter of such company, with like force and effect as to all its terms, conditions, stipulations, restrictions, covenants, and provisions as to franchises and routes as if the same formed a part of the original charter of such company; and no removal of tracks already laid, or interruption of or delay in the time of beginning or completion of the work of laying tracks already authorized to be laid, or change of route therein provided for, shall operate or be construed to deprive or divest any such company, entering into such contract, of any of the rights, franchises or privileges possessed by it at the time of entering into such contract, so as to operate to the disadvantage of any company subsequently formed and seeking to use any street, streets, or portions of a street or streets, covered by such contract: *Provided*, That nothing in this act contained, nor any contract entered into in pursuance thereof, shall be construed to limit or affect the right of any such company, or impose any additional liability for the exercise of, or of a steam railroad company to lay its tracks over, upon, or across such street or streets, or portions thereof.⁵⁹ Any provisions in any laws and portions of laws, whether special or general, in conflict with the same may be inconsistent herewith, are hereby re-

1. Act May 3, 1905, P. L., 379.
2. Act May 3, 1905, P. L., 379.

1549. Municipalities May Contract with Surface, Elevated, Underground or Motor Power Companies to Fix and Regulate the Powers and Duties of the Contracting Parties.

It shall and may be lawful for any city, borough or township of the one part, and any street passenger railway company, surface, elevated or underground, or motor power company leasing and operating the franchises and property of such company within the limits of such cities, boroughs or townships, of the other part, to enter into contracts with each other affecting, fixing, regulating the franchises, powers, duties, and liabilities of such companies, and the regulations and respective rights of the contracting parties. Such contracts may, inter alia, provide for payments by the companies to the local authorities, in lieu of the performance of certain duties or the payment of license fees or charges imposed in favor of such city, borough or township by the charters of the respective companies or by any general law or ordinance, for the appointment by the local authorities of a certain number of persons to act as directors of such company, in conjunction with the directors elected by the stockholders of such company, and, further, may provide for the ultimate acquisition of the local authorities, upon terms mutually satisfactory, of the leaseholds, property and franchises of the contracting companies.

1550. Policemen May Be Commissioned for Street Railway Corporations.

Any corporation, chartered under the laws of this Commonwealth as a street passenger railway, and owning or operating the same in said Commonwealth, may apply to the mayor of the city on the streets of which said railway is operated, or the burgess of any borough where said railway is being operated, or any justice of the peace residing in a township through which said railway shall run or pass over, to commission such person or persons as said corporation may designate to act as private policemen for said corporation.^{61*}

Said officials, mentioned in section one of this act upon application, may appoint such persons, or so many of them as they may deem proper, to be such policemen, and shall issue to such

(61) Act April 15, 1907, P. L., 80.

(61*) Sec. 1, Act June 7, 1901, P. L., 508.

or persons so appointed a commission to act as such po-
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police shall, before entering upon the duties of his
 office and subscribe the oath required by the seventh article
 of the Constitution, before the recorder in the county in which
 he is appointed; which oath, after being duly recorded by such
 recorder, and a certified copy of such oath, made by the recorder
 of such county, shall be recorded, with the commission, in the
 county in which such policeman was appointed, and in which it is
 to be so recorded; and such policeman, so ap-
 pointed, shall severally possess and exercise all the powers of po-
 lice in the county in which they shall be so authorized to act,
 as aforesaid; and the keepers of jails and lockups in station houses
 of such county are required to receive all persons arrested by such
 police for the commission of any offense against the laws of
 the Commonwealth, upon the cars or premises of any such cor-
 poration, to be dealt with according to law.^{61***}

Police of a corporation shall, when on duty, severally wear a
 uniform shield, with the word "police" and the name of the rail-
 road corporation for which appointed inscribed thereon, and said
 shield shall always be worn in plain view, except when employed
 in private lives.⁶²

Compensation of such police shall be paid by the corpora-
 tion in which the policemen are respectively appointed, as may
 be determined upon between them.^{62*}

Whenever any corporation shall no longer require the services
 of a policeman, as aforesaid, they may file a notice to that ef-
 fect with their corporate seal, attested by their secretary, in the
 county where the commission of such policeman has been recorded,
 and the same shall be noted by the recorder upon the margin of the
 record where such commission is recorded, and thereupon the
 commission of such policeman shall cease and be determined.^{62**}

Sec. 2, Act June 7, 1901, P. L., 508.

Sec. 3, Act June 7, 1901, P. L., 508.

Sec. 4, Act June 7, 1901, P. L., 508.

Sec. 5, Act June 7, 1901, P. L., 508.

Sec. 6, Act June 7, 1901, P. L., 508. This act was doubtless passed
 upon the opinions by the Attorney General—Railroad Police, 9 D. R., 36
 and Allentown & Bethlehem Rapid Transit Co., 11 Pa. C. C., 438
 and the Act of February 27, 1865, P. L., 225, did not provide for
 the employment of railroad police for traction and electric railways.

1551. Companies in Cities of the First Class May Use Other Than Animal Power in the Carriage of Passengers.

Passenger railways in any and all cities of the first class in this Commonwealth may use other than animal power in the carriage of passengers in their cars whenever authorized so to do by the councils of such city, and the limitations contained in any of the charters of passenger railway companies restricting them to the use of horse power be and the same are hereby repealed: *And it is provided further*, That the councils of such city shall not exercise any of the powers conferred by this act, except such railway shall reduce their fares to five cents for a single ride on said railway.

1552. Companies in Cities of the Second and Third Classes May Use Other Than Animal Power in the Carriage of Passengers.

Passenger railways in any city of the second and third class of this Commonwealth may use other than animal power in the carriage of passengers in their cars, whenever authorized so to do by the councils of such cities; and the limitations contained in any of the charters of passenger railway companies operating in such cities, restricting them to horse power, be and the same are hereby repealed.⁶⁴

1553. Cities of the First Class May Consent to Extension of Street Railways.

The councils of any city of the first class are hereby empowered in all cases of passenger railways which have been authorized heretofore and now laid in the streets of said city, to consent to the further construction and extension of the lines of said railway from any point at which there is an existing construction, along any street already used by them, and over any street or street not occupied by any passenger railway, or the right to use any street or streets for passenger railway purposes has not been granted by any act of assembly of this Commonwealth, for a distance not exceeding six hundred feet on any one street; and it is necessary to use any street or portion of street already occupied.

(63) Act May 8, 1876, P. L., 147. This act is constitutional; *Weinman v. Wilkesburg & E. L. Pass. Ry. Co.*, 118 Pa., 192, distinguished. *Reeve v. Phila. Traction Co.*, 152 Pa., 153 (1893). See Sec. 1602.

(64) Act May 24, 1878, P. L., 118. See Sec. 1602.

track of another company, or granted aforesaid, in order to create a route or make a circuit, it shall be lawful, with consent of the said councils, to lay a track thereupon, for a distance not exceeding six hundred feet, or with the consent of the company whose track is already laid thereon, to use such track; and in such case compensation shall be made to the company whose track may be thus used, by annually paying to the said company one per centum on the one-half cost of that portion of the track so used, and one-half of the cost of keeping it and the street in repair. *Provided*, That no passenger railway company shall be authorized by virtue thereof to extend its tracks over any street or highway, exceeding in the aggregate eighteen hundred feet in length. ⁶⁵

Acceptance of Article XVI of the Constitution.

The provisions of this act shall not inure to the benefit of any corporation, unless such corporation shall, before claiming the benefits of this act, file in the office of the Secretary of the Commonwealth an acceptance of the provisions of article sixteen of the Constitution of the Commonwealth; which acceptance shall be by resolution adopted at a regular or called meeting of the directors of such corporation, which shall be certified under the seal of the corporation, and filed in the office of the Secretary of the Commonwealth; and a copy of such resolution under the seal of the corporation shall be filed in the office of the Secretary of the Commonwealth shall be for all purposes. ⁶⁶

Regulation of Hours of Labor of Employees.

From and after the passage of this act it shall be unlawful for any president, board of directors, superintendent or other agents of any horse, cable and electric railway company to permit or suffer any conductor, driver or any other person in the employ of any such company, to work more than twelve hours in any one day in the service of such company: *Provided*, That all necessary labor, in excess of and above the time set by this section, shall be considered overtime work, for which the laborer shall receive additional compensation. ⁶⁷

Sec. 1, Act April 30, 1878, P. L., 38. See Sec. 1604.

Sec. 2, Act April 30, 1878, P. L., 38.

Sec. 1, Act March 24, 1887, P. L., 13.

1556. Penalty.

Any president, director or other officer of such company, who shall permit or suffer any conductor, driver or any other person in the employ of such company to work more than twelve hours in any one day in the service of such company, except as provided in section one, shall be guilty of a misdemeanor, and, on conviction thereof, shall suffer imprisonment for not less than thirty days, nor more than six months.⁶⁸

1557. Evidence of Actual Service to be Prima Facie Proof of Permission to Work.

On the preliminary trial or hearing of any such president, director or other officer, charged with the misdemeanor aforesaid, evidence of the actual service by such conductor, driver or other employe, during more than twelve hours in any one day, shall be sufficient *prima facie* proof of such permission, or sufferance, on the part of such president, director or other officer: *Provided, however*, That a party charged with such offense may show, in his defense, that such excessive service was without his knowledge, permission or sufferance.⁶⁹

1558. Stock of Railroad Companies Not to Be Issued for Less Than Par Value.

No railroad corporation of this Commonwealth, its directors or officers, shall authorize or make any issue of its capital stock for money for a less amount than the full par value of each share of such stock, which par value in money shall be actually paid into the treasury of such corporation before the issue of any full paid certificate for such shares of stock.⁷⁰

1559. Stock Not to Be Issued for Labor or Property Until a Certificate Has Been Filed.

No railroad corporation of this Commonwealth, its directors or officers, shall authorize or make any issue of its capital stock, where such issue is to be in payment for labor done or property

(68) Sec. 2, Act March 24, 1887, P. L., 13.

(69) Sec. 3, Act March 24, 1887, P. L., 13.

(70) Sec. 1, Act May 7, 1887, P. L., 94. This act applies to street railway and traction companies. *Cheetham v. McCormick*, 178 Pa., 186 (1888). See Sec. 1582.

until after the president of such company shall have filed, in the office of the Secretary of the Commonwealth, a statement setting in detail the prices paid or to be paid for the several kinds of labor done, and for the property received or to be received, accompanied with the oath or affirmation of himself and of the chief officer of said company, that the prices shown by such statement for the several kinds of labor done, and for the property received or to be received, were not in excess of the prices for which at the time the labor was done or the property contracted for could have been obtained for money paid, and that no certificate of stock has been or will be issued, in payment for such labor or property, for a larger amount than the actual cash value of the labor, or property, detailed in such statement.⁷¹

Bonds Not to Issue Until Full Amount of Capital Stock Has Been Paid in.

No railroad corporation of this Commonwealth shall issue its bonds, or other certificates of indebtedness, until after the full amount subscribed of its authorized capital stock shall have been actually paid for, either in money, labor done or property received; nor shall it at any time issue such bonds or other certificates for an amount in excess of its capital stock, as shown by its records on file in the office of the Secretary of the Commonwealth; nor shall it have been actually paid for, either in money, labor or property received, in accordance with the provisions of the seventh section of the sixteenth article of the Constitution, and with the provisions of this act; nor shall it issue the same for less than their fair market value, or by any other device evade the true intent and meaning of this act; and any stock or bonds or certificates of indebtedness, hereafter issued, in violation of the terms of this act, shall be void.⁷²

Proceedings to Enforce the Foregoing Provisions.

On the complaint of any stockholder in any railroad company of this Commonwealth, or of any two reputable citizens resident in the town traversed by the line of the railroad of such company, or of any town of which will be affected by its construction, that the company is about to issue, or has issued, since the passage of

Sec. 2, Act May 7, 1887, P. L., 94.

Sec. 3, Act May 7, 1887, P. L., 94.

this act, either stock or bonds, or other certificates of indebtedness, in contravention of the provisions of this act, or of section seven of article sixteen of the Constitution (which complaint shall be in writing, verified by affidavit, and filed with the Attorney General of this Commonwealth) it shall be the duty of the said Attorney General, at once, to institute proper proceedings at law or in equity, or both, in the name of the Commonwealth, to enforce the provisions of this act, and to restrain and prevent the company from consummating or continuing any act, or acts, alleged to have been done, or to be contemplated, in violation of the terms of this act.⁷³

1562. Penalty for Violation of Such Provisions.

Any president, secretary or treasurer of any railroad corporation of this Commonwealth, affixing his name or attestation to any certificate of stock, or corporate bond, or any director of any such corporation knowingly assenting to the issue of such stock, or bond, in violation of the terms of this act, or any president, chief engineer or other officer, of any railroad corporation, making an affidavit, required by the second section of this act to be made, containing any false statement, in reference to any of the things as to which affidavit is, by that section, required to be made, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine not exceeding five thousand dollars.⁷⁴

1563. Railroad Companies Forbidden to Acquire Stock or Bonds of Street Railway Companies Paralleling Their Lines, or Guarantee the Same, or Lease or Purchase or Control the Works of Such Companies.

From and after the passage of this act, it shall not be lawful for any railroad corporation, created by or existing under the laws of this Commonwealth, to acquire, purchase, or guarantee the stock, bonds, or other securities of, or lease or purchase the works or franchises of, or in any way control, any street passenger railway corporation owning or having under its control parallel or competing line with said railroad.⁷⁵

(73) Sec. 4, Act May 7, 1887, P. L., 94. The Attorney General may proceed for violations of this act. See Sec. 253.

(74) Sec. 5, Act May 7, 1887, P. L., 94.

(75) Sec. 1, Act June 1, 1907, P. L., 385.

violation or attempted violations of this act may be restrained by appropriate proceedings, either at law or equity, at the instance of the Commonwealth, through the Attorney General; and that any such violation shall also constitute a misdemeanor, and, upon conviction, the offending corporation, officers, directors, or agents participating in such violation, shall be sentenced to pay a fine of not more than five thousand

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**Railroad and Other Corporations Forbidden to Consolidate
With or Otherwise Control Parallel or Competing Lines.**

From and after January first, one thousand nine hundred and no railroad, canal, or other corporation, or the lessees, purchasers, or managers of any railroad or canal corporation, shall acquire the stock, property, or franchises of such corporation, or lease or purchase the works or franchises of, or in any way control, any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer or agent of any other railroad or canal corporation owning or having control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines, shall, when decided by the party complainant, be decided by a jury, as in other cases.⁷⁷

Penalty.

Any violation, or attempted violation, of this act may be restrained by appropriate proceedings, either at law or in equity, at the instance of the Commonwealth, through the Attorney General. It shall be the duty of the Attorney General to institute such proceedings at any time, upon the application of any private individual or corporation affected by such merger or consolidation; and that any such violation shall also constitute a misdemeanor, and, upon conviction, the offending corporation shall be sentenced to pay a fine of not less than one thousand (\$1,000) dollars, and its officers and directors participating in such violation shall be sentenced to pay a fine of not more than one thousand dollars nor less than five hundred dollars.⁷⁸

Sec. 2, Act June 1, 1907, P. L., 385.

Sec. 1, Act May 31, 1907, P. L., 353.

Sec. 2, Act May 31, 1907, P. L., 353.

1566. Common Carrier Corporations Forbidden to Engage in Mining or Manufacturing Articles for Transportation on Their Lines.

No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works, nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire land freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the product of its mines or manufacturing factories on its railroad or canal not exceeding fifty miles in length.⁷⁹

1567. Penalty.

Any violation or attempted violation of this act may be punished or restrained by appropriate proceedings, either at law or in equity, at the instance of the Commonwealth, through the Attorney General; and that any such violation shall also constitute a misdemeanor, for which the offending corporation, as well as its president, vice-president, and members of the board of directors participating therein, may be indicted; and, upon conviction, the offending corporation shall be sentenced to pay a fine of not more than one thousand (\$1,000) dollars, and the president, vice-president, and directors participating therein shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or less than five hundred dollars (\$500).⁸⁰

1568. Steam and Electric Railway Companies Required to Annually Report Their Mileage to the Secretary of Internal Affairs.

It is hereby made the duty of every corporation owning, leasing or operating a steam or electric railway, and engaged in the business of carrying freight or passengers, within the limits of this State, to make and return, under oath or affirmation of the president or other executive officer of said corporation, to the Secretary of Internal Affairs, on or before August thirty-first, A. D. Domini one thousand nine hundred and seven, and every

(79) Sec. 1, Act May 31, 1907, P. L., 352.

(80) Sec. 2, Act May 31, 1907, P. L., 352.

hereafter, a report, setting forth in detail the name of each line and branch line owned, leased, or operated by such corporation, naming the termini of such main line or branch line, setting forth the exact number of statute miles between each station and every other station on said lines, at which trains stop to receive or discharge freight or passengers, and the total number of statute miles owned, leased, or operated by such corporation within this Commonwealth.⁸¹

Penalty.

Any such corporation which shall wilfully refuse or neglect to make such report, as herein provided, at the time specified in the last section of this act, or for making a materially incorrect report, shall be liable to a penalty of five thousand dollars, to the use of the Commonwealth, for every such refusal or neglect, to be paid for and recovered as debts of like amount are, or may be, lawfully recoverable.⁸²

The foregoing act relates to electric street railways. The word "station" as applied to such railways, includes not only such stations as may be established for the receipt and discharge of freight and passengers, but also those points on the line of the railway after passing which an additional fare is charged.⁸³

Boroughs May Build Bridges Over Street Railways.

Whereas several boroughs of this Commonwealth are hereby authorized to locate and build viaducts or bridges, to be used as public highways, over railroads, rivers, creeks, streams, and private property, or over and across railroads and any of them, or over and across railroads, whether the said viaducts or bridges be wholly within, or partly without and partly within, the borough or town for the purpose of uniting two or more different streets or highways, or separate portions of the same highway or extension thereof: *Provided*, That the said viaducts or bridges must, in all cases, cross the aforesaid railroads; and that, in all other cases, the said viaduct or bridge shall be erected in the manner provided by the existing laws for the erection of such viaducts or bridges in the several boroughs of this Commonwealth.⁸⁴

Sec. 1, Act May 1, 1907, P. L., 147.

Sec. 2, Act May 1, 1907, P. L., 147.

Electric Steel Railways. Op. Atty Gen., 16 D. R., 618 (1907).

Sec. 1, Act May 25, 1907, P. L., 240.

1571. Procedure for Construction of Same.

The said boroughs shall have the right to enact ordinances providing for the laying out and opening of the routes or locations for said viaducts and bridges, which shall be public highways, and the proceedings for the said laying out and fixing locations and for the opening thereof shall be the same as is provided by law in the laying out and opening of streets in said boroughs, except that no petition of property owners shall be required therefor.⁸⁵

1572. Ascertainment of Damages When Parties Cannot Agree.

In case the said respective borough has not agreed with the owner or owners for the damages done, or likely to be done, by the erection of said viaduct or bridge, it shall be lawful for the said borough to take and appropriate the lands and property necessary, over and across which to erect said bridge or viaduct, and the damages and benefits caused by the said taking and appropriation shall be assessed by three freeholders as viewers, appointed by the Court of Common Pleas, in the same manner and with like proceedings as is now or shall hereafter be provided by law in the opening of public streets.⁸⁶

1573. Borough Authorities May Contract With County Commissioners and Street Railway Companies for Construction of Bridge.

The said borough shall also have the power to enter into and unite in a contract or contracts with the county commissioners of the proper county, and also with railroads, street railway, and other companies, and parties interested, or with any or all of them, for the building, construction, and maintenance of said viaduct or bridges, or for certain parts or portions thereof, and for the payment of any damages caused by the location and erection of said erection.⁸⁷

1574. When Bridge Crosses a Stream, Over Which County Is Authorized to Build Bridges.

When the said viaduct or bridge crosses a river, creek, stream, or other place, over which the county is authorized by law

(85) Sec. 2, Act May 25, 1907, P. L., 240.

(86) Sec. 3, Act May 25, 1907, P. L., 240.

(87) Sec. 4, Act May 25, 1907, P. L., 240.

bridges, the said county commissioners may contract, subject to the approval of the Court of Quarter Sessions of the county, for that part or portion of the viaduct or bridge crosses any of the places hereinbefore mentioned, over which the county is authorized by law to build bridges, including abutments and piers thereof, and such parts shall thereafter be maintained as a county bridge; or, they may contract for such portion of the whole structure as is equal to the part or portion of the viaduct or bridge over the respective river, creek, stream, or other place, as aforesaid: *Provided, however,* That, in all such cases, the said county commissioners may contract to pay an amount of money greater than that which is hereinabove provided for, toward the construction of the entire structure; but the amount of the said additional moneys, over and above the amount required to build the bridge or viaduct across the respective river, creek, stream, or other place, shall be first approved by the court of Quarter Sessions. When the said viaduct or bridge shall not cross a river, creek, stream, or other place aforesaid, but shall cross over or under any railroad, or railroads and private property, the said county commissioners may contract, subject to the approval of the court of Quarter Sessions, to pay an amount of money not exceeding thirty per cent of the entire cost of the proposed viaduct or bridge; and the viaduct or bridge shall thereafter be maintained as a borough structure, by the borough which shall be authorized to contract with any of the parties interested, except the county aforesaid, for the maintenance of the same.⁸⁸

What Contracts for Construction of Such Bridges Shall Stipulate—Payments—Maintenance of Bridges.

Any contract herein provided for may stipulate that the respective borough, county, railroad company, street railway, or other company, or parties interested, or any of them, shall pay a certain part or portion of the whole contract price or cost of the work, including damages; or may stipulate that each shall contribute or pay for the construction of a certain part or portion of the work, and may otherwise provide for the payment of the damages. When any railroad company, street railway, or other company, or other parties interested, agree to pay a certain part or portion of the cost of the entire work, they shall pay such part or

portion into the proper borough treasury; and upon said payment the borough treasurer shall be liable therefor, and he shall pay the same over to the contractors, as may be provided in the contract, but the amount to be paid by the respective county shall be paid directly to the contractor, as may be provided by the said contract. The said agreements may also provide for the maintenance of the said viaducts and bridges after their erection. All contracts provided for by this act shall be binding upon the parties thereto, their lessees, successors, heirs and assigns.⁸⁹

1576. Street Railways Not Contributing to Cost of Construction of Bridges to Pay Toward Maintenance of Bridges.

Before any railroad, which has not contributed to the payment of the cost of construction of said viaduct or bridge, shall be permitted to run its line or lines of tracks under or upon said bridge or viaduct, it shall enter into a contract with the said borough and thereafter pay a reasonable amount, part, or portion toward the keeping up and maintaining of the said structure, which amount shall be at the same rate, on the same basis, as is paid by the other railroad companies.⁹⁰

1577. Plans and Specifications of Bridges—Contracts.

Whenever the borough, county commissioners, and the railroad, street railway, and other companies, and others interested, or any of them, have entered into a contract or contracts for the construction of said bridge or viaduct, as is hereinbefore provided, it shall be lawful for the said borough and the said county commissioners to have prepared plans or specifications of the said work, and thereafter to advertise for bids, and to award the contract to the lowest responsible bidder. The contract for the said work shall provide that the county shall pay for its respective part of said bridge or viaduct, and the borough shall contract for the other part of the said work; but the said contract as to the borough's part thereof shall be based upon the appropriation made by the borough for the part of the work for which it had agreed to pay, and the remaining part of the contract price shall be based upon the amounts the other parties have agreed to pay; and the contractor shall have the right of action against each party under

(89) Sec. 6, Act May 25, 1907, P. L., 240.

(90) Sec. 7, Act May 25, 1907, P. L., 240.

and contract for the part thereof agreed to be paid by each respectively, as set forth in the contract or contracts in all the parties unite as aforesaid.⁹¹

Contracts Where County Does Not Join in Same.

Where the county commissioners do not unite in any such contract as is hereinbefore provided for, it shall be lawful for the said borough to contract for the construction of the viaduct as aforesaid and to pay for the entire work or to contract in any other manner as the borough may see fit in which case the aforesaid parties in the for the said work shall be the plans and specifications and advertisement shall be prepared by the borough at with all or any other of for and the contract let in the manner hereinbefore provided. The contract for the work shall be based upon the borough's application, and upon the amounts agreed to be paid by the other parties, as provided in the preceding section.⁹²

Recording of Contracts.

Any of the contracts hereinbefore provided for may be recorded in the recorder's office of the proper county in which the borough is situate, and such record shall be notice to all persons who might be affected thereby.⁹³

Sec. 8, Act May 25, 1907, P. L., 240.

Sec. 9, Act May 25, 1907, P. L., 240. The mistakes in the wording of section exist in the act as printed in the pamphlet laws.

Sec. 10, Act May 25, 1907, P. L., 240.

CHAPTER LXXI.

STREET RAILWAY AND TRACTION COMPANIES.

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History of Street Railway Companies in Pennsylvania.

et passenger railway companies began to be formed in
 lvania by special acts in 1853, but it was not until 1858
 y great number were formed, eleven being incorporated in
 ar, and eight in the year following.

first general incorporation act providing for the formation
 companies was that of May 23, 1878, P. L., 111, which
 d for the incorporation and government of street railway
 ies in cities of the third, fourth and fifth classes, and in
 ts and townships, which act was followed by that of March
 9, P. L., 9, which provided for the incorporation of such
 ies in cities of the second and third classes.

6 of the Act of June 13, 1883, P. L., 122, provided for the
 ration of traction motor companies, and the Act of the
 March, 1887, P. L., 8, provided for the incorporation of
 ower companies for operating passenger railways.

Supreme Court having decided in the case of *Weinman v.*
burg & E. L. P. Ry. Co., 118 Pa., 192 (1888), that the
 March 19, 1879, P. L., 9, was unconstitutional, being
 because it related to but a certain class of street railway
 ies, and local because its operations were confined to cities
 econd and third classes, and it afterwards being held¹ that
 or Act of May 23, 1878, P. L., 111, was void for similar
 , the Legislature passed the Act of May 14, 1889, P. L.,
 ich provides for the incorporation of street railway com-
 in all cities and in boroughs and townships. This act,

Smith v. Reading City Pass. Ry. Co., 13 Pa. C. C., 49; *Berks &*
Tpk. Co. v. Lebanon Elec. Ry. Co., 5 Pa. C. C., 467.

variously amended, as given in the preceding chapter, is still in force. An Act of June 7, 1901, P. L., 523, provides for the corporation of elevated or underground passenger railways.

1581. Changes Effectuated in the Laws Relating to Street Railway Companies by the Acts of 1907.

Numerous radical changes were effected in the laws relative to street railway companies by various acts of the General Assembly passed at the session of 1907.

By the Act of June 1, 1907, P. L., 367,² the consent of the authorities of all the cities, boroughs and townships through which the route of a proposed company extends must be obtained before a charter will be granted to such corporation.

By another act of the same date,³ such corporations are vested with the right of eminent domain.

By the Act of April 22, 1907, P. L., 96, such companies are given the right to do an express business and to transport live freight and property.⁴

Various other acts relating to such corporations were passed at the same session of the general assembly and will be found in the text.

The various enactments referred to were made without any reference to each other or to what the law was at the time they were passed, with the result that many of their provisions are conflicting and even contradictory. Such provisions will be discussed later in this chapter under appropriate headings.

1582. When Street Railway Companies Are Included in the Term "Railroads" as Used in Acts of Assembly—Definition.

City passenger railways are included in the term "railroad" employed in the Act of May 16, 1861, P. L., 702, and the provisions of said act relating to mergers apply to said railways.

They are also "railroad corporations," within the meaning of the Act of May 7, 1887, P. L., 94, entitled "An act to enforce

(2) See Sec. 1495.

(3) See Sec. 1520.

(4) See Sec. 1527.

(5) *Hestonville, M. & F. Pass. Ry. Co. v. Phila.*, 89 Pa., 210 (1879); approved in *Gyger v. Phila. City Pass. Railway Co.*, 136 Pa., 96 (1888); *Easton Transit Co.*, 13 Pa. C. C., 518 (1893).

st railroad corporations the provisions of Sec. 7 of Art. of the Constitution." ⁶

y are within the meaning of the Act of May 5, 1876, P. L., giving general powers to Courts of Common Pleas to enter- ills for the foreclosure of mortgages given by railroad com- 7 and also within the meaning of the Act of May 13, 1889, 205, prescribing the amount of stocks and bonds which e issued by railroad companies, ⁸ and of the Act of June 19, P. L., 1360, relative to railroad crossings. ⁹

y are "railroad corporations" within the meaning of the enth section of the Act of May 1, 1876, P. L., 53, relating to ements of accident insurance companies. ¹⁰ They are also ads" within the meaning of Sec. 142 of the Act of March 60, making it a criminal offense to obstruct or injure any d. ¹¹

re is no specific definition, either statutory or in common tanding, of the term "passenger railway," and no necessary nce follows the use of that term, in the title of an act of in- ation, that the franchise it confers is restricted to the streets nunicipality, of limited extent, nor that such company may rry anything but passengers, nor may not use steam cars ils appropriate therefor. The terms "railway" and "rail- eing synonymous, the term "passenger railway" has no e meaning. ¹² But though the words "railroad" and "rail- are synonymous, yet, when either one or the other is used rovision, and it is evident from the context that a particular f road is intended, that kind of road only will be held to be bject of the enactment. Sec. 4, Art. XVI of the Constitu- providing that "no railroad, canal or other corporation . . . shall consolidate . . . with, or lease or pur-

Cheetham et al. v. McCormick, 178 Pa., 186 (1896).

Old Colony Trust Co. v. Allentown & Beth. R. T. Co., 192 Pa., 596

City of Allegheny v. Fed. St. & P. V. Railway Co., 179 Pa., 424

Pa. R. R. Co. v. Braddock Elec. Ry. Co., 152 Pa., 116 (1893); Raf- v. Central Traction Co., 147 Pa., 579; Pitts. Junction R. R. Co. v. Pitt St. Pass. Ry. Co., 192 Pa., 44 (1899).

Accident Co. Investments, Op. Atty. Gen., 16 Pa. C. C., 312 (1895).

Com. v. MacCully, et al., 2 D. R., 63 (1892).

Millvale Boro. v. Evergreen Ry. Co., 131 Pa., 1 (1889). See Raf- v. Central Traction Co., 147 Pa., 579 (1892).

chase the works or franchises of, or in any way contro, any railroad or canal corporation owning . . . a parallel competing line" is not applicable to street railway companies.

The Railroad Act of 1849 was not intended to apply to street passenger railways; the Act of April 4, 1868, P. L., 62, expressly excluded them from its application, and the Act of May 31, 1868, P. L., 275, permitting railroad companies to elevate or deepen their tracks applies only to railroads having an existing right to occupy city streets at grade. Whether or not a railway is a street passenger railway depends on the purposes of the road; if confined to city streets, and designed for street passengers only, and their reception along the route, it is a street passenger railway. An elevated street railway cannot be constructed under the provisions of the above named acts.¹⁴

"The rule established by our decisions is that these words ('railway' and 'railroad') used in the statutes will be considered as synonymous and either will be held to apply to both kinds of railroads, unless there appears from the title of the act its purpose or its context something to indicate that a particular kind of road is intended."¹⁵

1583. The Lines of Railroad Companies Incorporated Under the Act of April 4, 1868, May Be Operated by Electricity.

And a railroad company may be operated under the same authority to construct a tunnel entirely under ground and operate its lines therein by electricity.¹⁷

Since the passage of the Act of June 1, 1907, P. L., 368, giving street railway companies the right of eminent domain, the decision cited, which practically permits of the incorporation of such companies under the Act of 1868, is not as important as it once was, but it may still be desirable to incorporate under

(13) *Gyger v. Phila. City Pass. Railway Co.*, 136 Pa., 96 (1890).

(14) *Potts v. Quaker City Elevated R. R. Co.*, 161 Pa., 396 (1894).
Pa. C. C., 593 (1892); 3 D. R., 172.

(15) *Phila. v. Phila. Traction Co.*, 206 Pa., 35 (1903).

(16) *Howley v. Central Valley R. R. Co.*, 213 Pa., 36 (1905), overruled by *Kincaid v. Mahoning Valley R. R. Co.*, 25 Pa. C. C., 545 (1901).
Potts v. Quaker City El. R. Co., 161 Pa., 396 (1894); *Com. v. Northeast El. R. Co.*, 161 Pa., 409 (1894).

(17) *Sparks v. Phila. & Camden R. R. Co.*, 212 Pa., 105 (1905).

When local municipal consent, made a condition precedent to incorporation under the Act of April 14, 1889, and its supplement by the Act of June 1, 1907, P. L., 366, cannot be obtained, where it is desired to join the tracks of a proposed company with those of a steam railroad or for other reasons which may affect themselves.

Court may authorize a corporation formed under the Act of April 14, 1868, and operated by electricity, to cross highways with tracks at grade, under suitable regulations as long as it continues to be operated by electricity.¹⁸

Conflicting Claims to Construct and Operate on the Same Route.

After the passage of the Act of June 1, 1907, P. L., 367, which provides for municipal consent as a condition precedent to the incorporation of a street railway company, and so disposing of any question as to any conflicts between such companies regarding the right to construct and operate on a given route, the question of priority of right to a given route was as follows:

When a charter to construct and operate on a given route was granted to a street railway company, no other charter for the same route could be granted "within the time during which, by the provisions of this act, the company first securing the charter has the right to commence and complete this work: *Provided*, That the consent of the local authorities shall have been promptly applied for and shall have been obtained within two years from date of charter."¹⁹

When, then, the corporation made application for municipal consent within two years, its charter right to the route was exclusive for that period, whether it actually obtained local consent or not, inasmuch as no other company could be chartered within that period to occupy the same route, nor could the route be occupied by another company under an extension.²⁰

At the expiration of the said period of two years, however, the company would still have a right, on obtaining municipal consent, to construct and operate on the route, although not an *exclusive*

¹⁸ *Easton Impt. Ry. Petition*, 32 Pa. C. C., 438 (1906); 16 D. R., 567.

¹⁹ *Sec. 1, Act June 7, 1901, P. L., 514.*

²⁰ *Coatesville & D. St. Ry. Co. v. West Chester Ry. Co.*, 206 Pa.,

right, because at the end of such period another company could be incorporated to occupy the same route, or an extension might be made covering the same, in either of which events either company might apply for and obtain municipal consent.

If, however, a corporation did not make application for a charter, or if, having obtained such consent, it did not begin work within two years from the date of obtaining the same, and finished work and begin operation thereof within five years thereafter, it forfeited all rights to occupy the route.²¹

In other words, the company must have applied for all necessary consents within two years from date of incorporation or from the date of its rights; if it applied therefor, but did not receive the charter within the said period, it forfeited its *exclusive* right, but still retained the right to apply for and obtain municipal consent, in competition with any company incorporated after the expiration of said period of two years, or with any extension made after that period.

If it obtained municipal consent within two years, or at any time thereafter, it was required to begin construction within two years from the date of obtaining such consent and to finish work and begin operation within five years thereafter, or forfeit its rights to the route.

Sec. 1 of the Act of May 3, 1905, P. L., 368, amending Sec. 1 of the Act of June 7, 1901, P. L., 514, omits the prohibition of the issue of another charter, above cited, so that corporations could obtain a charter since the passage of the former act had no exclusive charter right for any period. The passage of the Act of June 1, 1907, however, gives the first proposed corporation obtaining all necessary municipal consents and applying for a charter, the right to the exclusion by implication of all other applications for a charter for the same route.

1585. Municipal Consent to the Construction and Operation of Street Railways.*

Prior to the adoption of the Constitution of 1874, there were under numerous decisions of the courts,²² nothing to prevent

(21) Sec. 6, Act May 3, 1905, P. L., 368. See Sec. 1516.

(21*) See Secs. 1495, 1508, 1516, 1548, 1549.

(22) Case of Phila. & Trenton R. R. Co., 6 Whart. 25 (1840); *M. v. Hsbg., P., Mt. J. & L. R. R. Co.*, 16 Pa., 182; *Com. v. Erie & N. R. Co.*, 27 Pa., 339; *Cleveland & Pitts. R. Co. v. Speer*, 56 Pa. 325 (1868); *Faust v. Second & Third St. Pass. Ry. Co.*, 3 Phila., 164.

power from granting to street railway companies the right to use the streets of cities and boroughs without the consent of the municipal authorities thereof. Some of the special acts incorporating street railway companies gave the right to use the streets of cities and boroughs enumerated therein absolutely; others required that municipal consent should be obtained before a franchise should vest, while others enacted that such consent should be presumed unless the municipal authorities expressly forbade the occupation of their streets by the company in question at a given time. Local consent is now required in all cases by Art. XVII, Sec. 9, of the Constitution of 1874, which provides as follows:

"A street passenger railway company shall be constructed wholly within the limits of any city, borough or township without the consent of its local authorities."²³

Under Sec. 9, Art. XVII of the Constitution, and Sec. 15, Act of May 14, 1889, P. L., 211, the consent of a city to the construction of a street railway upon its highways is a condition precedent to, and without it a company incorporated under the Act of 1889 has no right, present, or prospective, to occupy streets for any purpose.²⁴

Under Art. XVII, Sec. 9, of the Constitution of 1874, neither the legislature nor the courts can trespass upon the discretion absolutely to local bodies. Sec. 15 Act of May 14, 1889, repeats said section of Art. XVII, and neither enlarges nor diminishes the powers of the local authorities, and municipalities, in granting to street railway companies the privilege of using the streets. It may impose conditions under which the right may be enjoyed by the companies.²⁵

Act of June 1, 1907, P. L., 366, provides that articles of incorporation of street railway companies shall not be filed and re-

This provision does not apply to corporations formed prior to the adoption of the Constitution of 1874, unless they have accepted the provision of some subsequent act. *Williamsport Pass. Ry. Co. v. Williamsport*, 11 Pa. C. C., 1; *Harrisburg City Pass. Ry. Co. v. Harrisburg*, 7 Pa. C. C., 593; *Junction Pass. Ry. Co. v. Williamsport Pass. Ry. Co.*, 154 Pa. C. C., 465.

Larimer & Lincoln St. Railway Co. v. Larimer St. Ry. Co., 137 Pa. C. C., 100).

Allegheny v. Millville, Etna & Sharpsburg St. Ry. Co., 159 Pa. C. C., 93).

corded in the office of the Secretary of the Commonwealth letters patent issued thereon until there has been filed with same a duly certified copy of an ordinance or ordinances, of the cities, boroughs and townships of the first class, and by resolution of the board of road supervisors of townships of the second class, through which the route of the company extended, authorizing the construction thereof by the company and evidencing the consent of the local authorities required by the Constitution and this act.²⁶

There being no corporation in existence at the time when application is made for local consent, the question arises to what such consent should be given.

It may be questioned whether a consent given by name of a proposed corporation, which may never come into existence, will be a valid consent,²⁷ and in cases of such consent questions may arise as to the identity of a corporation subsequently formed with the proposed corporation which the municipal authorities had in mind when granting the consent. On the other hand, if consents are given to individuals, there would be nothing to prevent them from conveying the franchise personally granted to them to the corporation subsequently formed, in consideration of the stock paid. The better plan would seem to be to grant the consent to the incorporators of the proposed company, naming them and describing them in the ordinance as such incorporators and stating forth that the franchise is conferred upon them in trust for the corporation when formed.

It will be noted that while the said Act of 1907 requires municipal consents to the original route of a company before a charter will issue, no such condition precedent is required to the granting of any extension of said route, but such consent may be obtained after the granting of the extension.

Although under the provisions of the Act of June 1, 1907, § 368, granting the right of eminent domain, a street railway company may be chartered with a route which does not cover any street or highway in any municipality or township, yet the com-

(26) See Secs. 1495, 1508.

(27) *Union St. Ry. Co. v. Hazleton & North Side Elec. Ry. Co.*, 1 Pa. C. C., 271 (1894). See *Homestead St. Ry. Co. v. Pitts. & Home St. Ry. Co.*, 166 Pa., 162, 172; *Shenandoah Ht. & Pr. Co. v. Shenandoah Borough*, 34 Pa. C. C., 114 (1907).

local authorities thereof seems to be required by the afore-
 said act of June 1, 1907, P. L., 366, notwithstanding.

In the absence of the consent of local authorities, even where
 a petition has been asked for, the court will set aside the ap-
 plication and report of viewers. "The law will not lend its aid
 to the perpetration of a nuisance, under cover of an assessment
 of damages."²⁸

Where a street railway company incorporated prior to the Con-
 stitution of 1874 leases its property without legislative authority
 to a company incorporated under general acts, a borough whose
 streets are to the use of its streets by the railway company was not re-
 leased by the act, has no standing to object to the lease.²⁹

A municipality is without power to authorize a street railway
 company by ordinance to erect poles and wires on streets not cov-
 ered by its chartered route, although the same are used in con-
 junction with the wires on the streets which it is authorized
 by its charter to occupy. In such case, abutting owners have a
 right in equity to restrain the erection of such poles and
 wires.³⁰

Where a contract between a borough and a street railway pro-
 vides that the company shall not take up or remove its tracks with-
 out the consent of the borough, and while the contract is in opera-
 tion the county reconstructs a bridge so that the tracks of the
 company thereon do not align with those on either side, the com-
 pany has no right to readjust the tracks secretly and at night
 without securing or attempting to secure the consent of the
 borough. The borough will not in such a case, be restrained from
 preventing the taking up of the tracks before the company obtains
 its principal consent, but the borough may not arbitrarily withhold
 its consent nor impose further pecuniary obligations on the
 company in consideration of such consent.³¹

Where a street railway company has once obtained the consent
 of the municipal authorities to occupy and use the streets of a mu-

Harrisburg & Mechanicsburg Elec. Ry. Co. v. Harrisburg, C. & M. Co., 15 Pa. C. C., 389 (1894); 4 D. R., 17.

*Minersville v. Schuylkill Elec. Ry. Co. & Pottsville Union Trac-
 ting Co.*, 26 Pa. C. C., 101 (1902).

Van Voorhis v. Pittsburg & Charleroi St. Ry. Co., 13 D. R., 719

Chester, Darby & Phila. Ry. Co. v. Darby Borough, 217 Pa., 275

nicipality, it does not lose the right to occupy and use streets even though it does not begin work within two years such consent is obtained, if before the expiration of said years it again obtains the consent of the local authorities to occupy said streets for said purpose, although the obtaining of second consent may result in a longer period than two years the time when the consent was first obtained.³²

Where a township has granted a franchise to a street railway company to lay its tracks on a public road, with a condition subsequent that when required by the township it shall remove track from the side to the center of the road, the township may not, after the construction of the road, declare a forfeiture of the franchise, where it appears that it was impossible for the company to fulfill the condition by reason of the refusal of the owners abutting on one side of the road to give their consent to the construction of the railway in the center of the road.³³

And where a company has slightly deflected its tracks from a line established by a borough and the borough has acquiesced for ten years, it will be presumed to have ratified the line following, and, if, in reconstructing its track, the company adheres to the line it originally followed, the borough has no status to object thereto.³⁴

And where a street railway company authorized by ordinance to lay its tracks in the center of certain streets, laid them on the side of the same by direction of the street committee of council and the city engineer, and its location was acquiesced in by the city, held, that these circumstances were equivalent to a council of location by ordinance and that the location was lawful.³⁵

A motion of a borough council directing the street committee to remove the rails, tracks, etc., of a street railway company

(32) *Ellwood City v. Ellwood City St. Ry. Co.*, 33 Pa. C. C., 43 (1901). The Act of May 3, 1905, P. L., 368, amends Sec. 6 of the Act of May 3, 1901, P. L., 514, so as to prevent a street railway company from being deemed to have abandoned its rights, if it begin work within two years after municipal consent has been obtained, within the time limited by the consent "or any extension thereof." See Sec. 1516.

(33) *Millcreek Township v. Erie Rapid Transit St. Ry. Co.*, 21 Pa. C. C., 132 (1906).

(34) *Bridgewater Boro. v. Beaver Valley Traction Co.*, 214 Pa. C. C., 132 (1906).

(35) *Collins v. Carbondale Traction Co.*, 5 D. R., 18 (1895).

ution" within the meaning of the Act of May 23, 1893, P. 3, and unless the same is signed by the chief burgess as required by said act is invalid and equity will enjoin its execution.³⁶

Conditional Municipal Consents.

The right of municipal and township authorities to couple their consent to the construction and operation of a street railway within their limits with conditions has always been recognized.

The right of local authorities to give their consent or refusal to a street railway company to construct its road is derived from the constitution and not from the Act of 1889, and the railway company must take such consent upon such condition as the local authorities may impose, or not at all.³⁷

Where a street railway is granted a franchise to construct and operate its lines within a borough on condition that it shall run through the main street to a given point on the tracks of another company, which other company subsequently refuses to permit its tracks to be used for such purpose, the borough may withdraw its consent.³⁸

A borough may exact from a street railway as a condition to its consent to the use of streets the payment of a certain percentage of the earnings of the company and it is immaterial that a portion of the earnings may be from traffic outside the limits of the borough.³⁹

Where a street railway company is given the privilege of occupying the streets of a borough on condition that it shall build a branch, shall run its cars in a manner specified and shall use its road without the consent of the borough, and it fails to conform these conditions, a court of equity, at the suit of the borough, will enjoin the further use of the streets by the company.

Cumberland Valley Elec. Pass. Ry. Co. v. Carlisle Boro., 7 D. R. 197).

Plymouth Township v. Chestnut Hill & Norristown Ry. Co., 168 (1895); overruling *Same v. Same*, 15 Pa. C. C., 442 (1894).

Ashland Borough v. Ashland & Centralia Elec. Co., 27 Pa. C. C., 102).

Carlisle Borough v. Cumberland Valley Elec. Pass. Ry. Co., 22 Pa. C. C., 21 (1899).

Minersville v. Schuylkill Elec. Ry. Co. & Pottsville Union Traction Co., Pa. C. C., 101 (1902).

A company must comply with the conditions imposed when municipal consent was given; otherwise its operations will be enjoined on application of the municipality.⁴¹

The provision in the Act of 1889 that a company shall complete its road within two years after the consent of the local authorities has been obtained, unless the time shall be extended by such authorities, does not prevent the local authorities from making it a condition of their consent that the railway shall be completed within less time than two years. Where the time limit is, by express stipulation of the contract, one of the conditions on which the consent of the company is granted, time is of the essence of the contract, and if the company does not complete its railway within the stipulated time, and the local authorities revoke their consent, for breach of condition, they have a standing in equity to prevent the company from constructing the road.⁴²

An ordinance of a borough granted the right to a street railway to enter upon certain streets, provided that the construction of the road began in six and was finished within eighteen months. On failure to complete in eighteen months, the borough sought to enjoin the company from finishing the road, alleging forfeiture for non-compliance with condition. Held, that the borough may attach such conditions to its consent as it saw fit, but such conditions are not favored, and must be strictly construed; that failure to complete the road in eighteen months did not work forfeiture *ipso facto*, but that affirmative action must be taken by the borough, by resolution or ordinance, declaring a revocation before the forfeiture could be taken advantage of by injunction. The forfeiture must be declared by councils, but may be enforced by the burgess.⁴³

A borough granted to a street railway company the right to construct and operate upon a certain street, with the condition that the right should be forfeited if the company did not within one year construct and operate an extension described in the ordinance. The company failed to construct and operate said extension.

(41) Conshohocken Railway Co., 18 Mont., 95 (1902).

(42) Plymouth Township v. Chestnut Hill & Norristown Ry. Co., 181 Pa., 181 (1895).

(43) Burke, Chief Burgess, et al. v. Carbondale Traction Co., 15 Pa. C., 159 (1894).

four years after the passage of the ordinance another ordinance was passed revoking all rights granted by the first one. On being prayed for an injunction, the court entered a decree affirming the defendant's right to the use of the street forfeited and enjoining it from running its cars and ordering it to remove its tracks. Affirmed. In such case the borough cannot be held liable for damages, as the delay led to no change in the situation to the prejudice of the railway company.⁴⁴

A municipality may require, as a condition of its consent to the use of the streets by a street railway company, that a certain designated rate of fare shall be charged, and that a certain per cent. of the dividends shall be paid to the municipality.⁴⁵

A municipality in granting permission to a street railway company to operate upon a certain street, may reserve the right to grant a similar privilege to another company, but when it does so it cannot compel the first company to permit its tracks to be "crossed" by that of the second company, where there is room to lay separate tracks.⁴⁶

An ordinance provided that it should not go into effect until the company shall accept the same by its proper officials," and the provisions of the ordinance are conditions precedent, and the ordinance cannot become effective until they are performed in full compliance therewith.⁴⁷

A street railway company whose charter gives it, without qualification, the right to lay its track upon any public road, opened or to be opened, has a right to construct and operate its tracks on and along the streets of an incorporated borough, without obtaining the consent of the borough authorities thereto.⁴⁸

When a city by ordinance gives to a street railway company the right to use a particular street, but reserves in the ordinance the right to grant to any other railway company the right to use the same street, and the mayor, as a condition of giving his assent to the ordinance, requires the railway company to enter into an agreement to arbitrate any dispute that it may have with another

Lehigh Valley Borough v. Schuylkill Elec. Ry. Co., 205 Pa., 394

Lehigh Valley Borough v. Millvale E. & S. St. Ry. Co., 159 Pa., 411 (1893).

Lehigh Valley Borough v. Bond, 214 Pa., 307 (1906).

Lehigh Valley Borough v. Millvale, E. & S. St. Ry. Co., 159 Pa., 411 (1893).

Millvale Borough v. Evergreen Ry. Co., 131 Pa., 1 (1889).

company to which the right to the use of the street was granted, the company cannot subsequently allege that the agreement for arbitration not being part of the ordinance was binding on it, and that, even if it were, the agreement of mission is revocable.

If the ordinance, in such case, contains no clause of forfeiture, the agreement to arbitrate cannot be construed as giving the company the right to forfeit the franchises, because the company, after having appointed an arbitrator, was not able to carry through the arbitration, on account of its arbitrator, acting in good faith, being unable to agree with the second arbitrator on the choice of a third.

Where the city acting under the ordinance grants permission to another railway company to use the street in question, the first company cannot thereafter maintain a bill in equity to compel the second company to permit the second company to use the street. The party aggrieved in such a case is the grantee in the second ordinance.⁴⁹

1587. Where Municipal Consent Has Been Improperly Obtained.

Where a preliminary injunction has been granted to restrain the construction of a street railway in a borough because the councilmen who had voted in favor of the authorizing ordinance had received free passes and certain expenses from the company, the court may subsequently modify the decree so as to permit the construction of the railway, where it appears that the councilmen surrendered their passes and subsequently passed a second authorizing ordinance, without fraud or bribery.⁵⁰

An ordinance giving the consent of a borough to the use of the streets thereof by a street railway company is invalid if the members of the council who voted for the ordinance were stockholders or otherwise interested in the company.⁵¹

1588. Consent of Township Authorities.

The consent of the supervisors of a township to the use of township roads by a street railway company is invalid unless it is

(49) *Chester City v. Union Railway Co. of Chester*, 218 Pa., 24 (1904).

(50) *Keogh v. Pittston & Scranton St. Ry. Co.*, 195 Pa., 131 (1901).

(51) *Jolly et ux. v. Pitts., Neville Island & Coraopolis Ry. Co.*, 100 Pa., 1 (1895).

regularly convened meeting of the supervisors; and the proceedings should be entered in the township's books, kept by the clerk. A paper signed by the supervisors, in the pocket of the tractor, or of some officer of a corporation, is not the proper mode of action by the supervisors.⁵²

A supervisor of an independent road district is the proper authority to consent, or to refuse consent, to the occupation of highways by a street railway.⁵³

Consent by a supervisor to the use of township roads is invalid if it appears that it was given in consideration of a promise by the railway company to provide employment for the supervisor or his son at an agreed price per day,⁵⁴ or where the consent was obtained from him by a threat to have him arrested for fraudulently giving his consent to another company for a personal consideration, followed by a promise to give him the same consideration.⁵⁵

It would seem that, prior to the passage of the Act of June 1, 1892, P. L., 366, the grant of the use of a township road to a railway company before its charter is granted was void.⁵⁶

Where the supervisors of a township give their consent to the occupation of township roads by a street railway they act as the representatives of the people who built and use the roads and not as representatives of the owners of private property over which the roads pass. The company can protect itself only by secur-

Penna. R. R. Co. v. Montg. County Pass. Ry. Co., 167 Pa., 62 (1893); *Tamaqua & Lansford St. Ry. Co. v. Inter-County St. Ry.*, 167 Pa., 15 (1893); *Union St. Ry. Co. v. Hazleton & North Side Elec. Ry. Co.*, 15 Pa., 271 (1894); 3 D. R., 785; *Johnstown and Scalp Level Turnpike & Johnstown Pass. Ry. Co.*, 4 D. R., 594 (1895). The first case cited over-ruled *Union St. Railway Co. v. Hazleton & N. Side Elec. Ry. Co.*, 422 (1893), where a preliminary injunction issued at the instance of a company which had obtained consent at a regular meeting, at a subsequent to the consent of the supervisors, given separately, to the company, was dissolved.

Hain et al. v. Lebanon & Annville St. Ry. Co., 1 D. R., 452 (1892). *Lehigh Coal & Nav. Co. v. Inter-County St. Ry.*, 167 Pa., 75 (1895). *Tamaqua & Lansford St. Ry. Co. v. Inter-County St. Ry. Co.*, 167 Pa., 15 (1895).

Union Street Railway Company v. Hazleton & North Side Elec. Ry. Co., 15 Pa. C. C., 271 (1894). See *Homestead Street Railway Co. v. Homestead Elec. St. Ry. Co.*, 166 Pa., 162, 172.

ing the consent of every property owner along the roads which wishes to occupy.⁵⁷

Where a street railway is not built within the time specified in the grant of a franchise to construct and operate in a township, no act upon the part of the township authorities is necessary to complete the forfeiture of the franchise.⁵⁸

Where a street railway company obtained the consent of the township supervisors to construct and operate their street railway on the roads in the township and expended large amounts for construction, the de jure supervisors will not be permitted, months afterwards, to question the rights of the company.⁵⁹

1589. The Construction of a Street Railway May Not Be Brought to Completion Until the Consent of the Proper Authorities of Cities, Boroughs and Townships Through Which the Same Has Been Chartered to Run Has Been Obtained.*

Inasmuch as the consent of the local municipal authorities was now made a condition precedent to the granting of a charter, the following decisions do not now have that importance which they originally had.

As hereinbefore pointed out, however, municipal consent is apparently required as a condition precedent to the granting of an extension of a street railway company. Hence the decisions referred to are still applicable to such extensions and the consent of all municipalities through which an extension runs must be obtained before operations may be begun in any of them.

If a street railway company is chartered to be constructed from one point to another and its line must necessarily pass through a city, borough or township intermediate between the termini, and that city, borough or township refuses its permission, the power to build the road described in the application and charter may not be exercised. It must be possible for the company to complete its line before it has the right to begin work as against any city,

(57) *Penna. R. R. Co. v. Montg. Co. Pass. Ry. Co.*, 167 Pa., 62 (1891). The consent of the abutting property owners on both sides of the road is not a necessity, however. See Sec. 1591.

(58) *Millcreek Township v. Erie Rapid Transit St. Ry. Co.*, 209 Pa. 104 (1904).

(59) *Jordan v. Washington & Cannonsburg Ry. Co.*, 25 Pa. Super. 564 (1904).

(60) See Sec. 1495.

or township into which its line extends;⁶¹ and until it obtains such right it may be enjoined from constructing its railway by any person or corporation whose interests are adversely affected by such construction.⁶²

The consent of all the municipalities through which the charter street railway company authorizes its road to pass is a condition precedent to the right to begin the construction of the railway,⁶³ and the burden of proof is upon the street railway to show that it has secured all consents.⁶⁴

If one or more of the municipalities refuses its consent, the company cannot build a local road, even within the limits of the consenting municipalities, without a new charter and a new consent. As the consenting municipality may well object that its consent is being used for a purpose not contemplated when it was given, and within neither its letter nor its spirit. It would seem, therefore, that the surrendering of the part of the line for which consent had not been obtained, would not enable the company to construct and operate the remainder.⁶⁵

A street railway company which has not obtained the consent of the municipalities through which it proposes to build its line has no power to authorize contractors to make excavations in a street in which *has* consented, and if such contractors are forcibly resisted by a corporation having either an easement or an ownership in the land from making such excavations, the contractors, being trespassers, have no right of action against such corporation.⁶⁶

Rights of Owners of Property Abutting on Streets and Highways Occupied by Street Railways.

The law relating to the rights of owners of property abutting

Pa. R. R. Co. v. Montg. Co. Pass. Ry. Co., 167 Pa., 62 (1895).

Pa. R. R. Co. v. Parkesburg & Coatesville St. Ry. Co., 26 Pa. Ct., 159 (1904).

Lehigh Coal & Nav. Co. v. Inter-County St. Ry., 167 Pa., 75 (1895);

Township v. Tamaqua & Lansford St. Ry., Id., 84; *Penna. R. R. Co.*

Parkesburg, J. & P. St. Ry. Co., 176 Pa., 559 (1896); *Penna. R. R. Co. v.*

Creek Valley Elec. Ry., etc., 179 Pa., 584; *Wheeler & Boody v. Pa. R. R. Co.*, 194 Pa., 539 (1900).

Pa. R. R. Co. v. Parkesburg & Coatesville St. Ry. Co., 26 Pa. Ct., 159 (1904).

Lehigh Coal & Nav. Co. v. Inter-County St. Ry., 167 Pa., 75

Wheeler & Boody v. Penna. R. R. Co., 194 Pa., 539 (1900).

on streets and highways occupied by street railways has been materially changed by the provisions of the Act of June 1, 1907, P. L., 363.

It was originally held, as will appear from the following decisions, that it was unnecessary for a street railway company to obtain the consent of abutting property owners to the construction and operation of its lines on streets and highways either in cities or boroughs or townships. Subsequently, it was held that such consent must be obtained in townships. Later, it was held that it was not necessary to secure the consent of abutting property holders on both sides of a highway in townships upon which a street railway was constructed, if the consent of all such owners on the side of the street on which the railway was constructed was obtained. The authorities for the foregoing statements will be found later in this section.

The Act of June 1, 1907, P. L., 368, ⁶⁷ confers upon street railway companies the right of eminent domain, and provides in its first section as follows:

Before the right of eminent domain herein conferred shall be exercised upon any highway in any township, excepting for the purpose of crossing such highway, the consent of the owners of at least fifty-one per centum of the foot frontage of the entire distance to be traversed longitudinally on such highway in any township, shall be obtained.

It is apparent that if the track of a street railway company is constructed in the middle of a highway in a township, the consent of fifty-one per centum of the abutting property owners on both sides of the highway would be sufficient.

The question may arise, however, whether, if the tracks were constructed on one side of the road it would be sufficient to secure the consent of fifty-one per centum of the abutting property owners on that side of the road. In the one case the consent of fifty-one per centum of all the abutting property holders on the road, on both sides, would have to be obtained. In the other case the consent of fifty-one per centum of the abutting property owners on one side of the road, only, would be necessary.

A further question arises as to the constitutionality of the foregoing provision. The provision evidently looks to the acquisition by a street railway company of an easement to construct and

(67) See Sec. 1520.

a highway, and not to the taking of the fee of the abutting property holders in the real estate covered by such highway, but is no provision in the act for the giving of a bond to secure damages in cases where parties cannot agree to the same, nor for assessment of damages in such cases. The provisions relative to assessment of damages in the subsequent sections of the act are specifically limited to the ascertainment of damages in cases of injury to real estate, land or material, and such sections evidently do not contemplate the ascertainment of damages for the increased burden placed upon the property of abutting property owners covered by highways.

It has been generally understood in Pennsylvania that the abutting owner has a fee to the middle of the adjoining street and the public has only a right of passage over it: *Chambers v. Commonwealth*, 1 Y., 167; *Lewis v. Jones*, 1 Pa., 336 (see *Livingston v. Commonwealth*, 136 Pa., 519). But this must not be taken in its literal sense especially in towns and cities. . . . And it may now be as settled that the owner's rights as to abutting property are subject to the paramount right of the public, and the rights of the public are not limited to a mere right of way, but extend to all reasonable, legitimate street uses, such as the public may from time to time require," and the abutting property holder is entitled to no compensation for the additional servitudes imposed.⁶⁸

An owner of property abutting on a street has a standing right to object to the construction of a street railway upon the street, where it appears that the railway has obtained no valid authority to the use of the street from the municipality.⁶⁹ "What was decided (in *Larrimer Ry. Case*, 137 Pa., 533) was, that a property owner to which municipal consent had been refused did not have a position to contest the right of another company to which municipal consent had been given." The general rule is that one must show a special injury to secure an injunction that will apply in the case of such owner. He has a right to prosecute in the Quarter Sessions or to seek to stop their operations by injunction.⁷⁰

It was originally held or intimated that abutting owners upon

Lockhart v. Craig St. Ry. Co., 139 Pa., 419 (1890); *Rafferty v. Traction Co.*, 147 Pa., 579 (1892).

Thomas v. Inter-County St. Ry. Co., 167 Pa., 120 (1895).

Thomas v. Inter-County St. Ry. Co., 167 Pa., 120 (1895).

entire road, and the burden is on the company to show that it has obtained all necessary consents.⁷⁶

Railroad companies owning land on each side of a turnpike where their tracks cross it are not abutting property owners with the right to complain of the imposition by a passenger railway company of an additional servitude upon their land, and where the tracks of a company are crossed by an overhead bridge forming part of a public road, the company cannot enjoin the construction of a passenger railway across said bridge, where the street railway company offers to strengthen and reconstruct the bridge in a manner as may be necessary.⁷⁷

As to a railroad company which built and maintains a bridge carrying a public road over its tracks has a standing in equity to object to the construction of a street railway across said bridge, where the company proposing to construct the same has not obtained the consent of one abutting property owner and one municipality along its proposed line.⁷⁸

It seems, however, that where a property owner has consented to the entry of a street railway on her land she is estopped from maintaining a bill to enjoin the company from so entering without having first obtained consent of all other property owners.⁷⁹

In a bill in equity to restrain the construction of a second track of a street railway on a turnpike, a preliminary injunction was granted by the court below, where it appeared that the first track was laid on the turnpike north of the center line, and that complainant's land abutted on the south side of the turnpike, and that complainant had allowed over two years to pass by from the date of the construction of the first track before he objected to the construction of the second track, though he had notice that the railway was to consist of two tracks. The Supreme Court refused to interfere at this stage of the case.⁸⁰

Where a street railway company lays a single track along a portion of its route on a turnpike road so as to plainly indicate an intention to build a double track road which single track is oper-

76) *Hannum v. Media, M. A. & C. Elec. Ry. Co.*, 200 Pa., 44 (1901).

77) *North Penna. R. R. Co. v. Inland Traction Co.*, 205 Pa., 579 (1904); 25 Pa. Super. Ct., 115.

78) *Penna. R. R. Co. v. Parkesburg & Coatesville St. Ry. Co.*, 26 Pa. Super. Ct., 159 (1904).

79) *Christie v. Phila. & Easton St. Ry. Co.*, 12 D. R., 508 (1903).

80) *Hinnershitz v. United Traction Co.*, 199 Pa., 3 (1901).

ated for two years, when the company begins to lay a second track, the abutting property owners not filing a bill until more than one-third of the new track has been laid, such owners are barred from their laches from relief in equity.⁸¹

But an abutting land owner is not guilty of laches because, years before, a prior company, of which the company occupies the road on which his property abuts is the assignee, entered on his side of the turnpike, without objection, and slightly graded an intended road-bed on which, as then constructed, the present company proposes to lay its ballast.⁸²

Where no special injury will result to the property owner on one side of a street by reason of the construction by a street way company of an elevated approach to a crossing of a street by a railroad wholly upon the other side of the street, and outside the traveled limits thereof, such owners have no standing to join the construction.⁸³

A company will not be restrained from building its road on one side of a turnpike because of the dissent of the owner of the property on the opposite side of the road when it has the assent of the township authorities, the turnpike company and the owner of the land on the side on which the road is to run,⁸⁴ and a preliminary injunction at the instance of an abutting land-owner holding to the middle of a turnpike road, restraining an electric railroad company from constructing a trolley on the turnpike in front of his property, will be continued to final hearing only as modified to cover merely the half of the turnpike on the plaintiff's side.

Owners of abutting property have the right to take away goods or deliver goods or persons in vehicles and if the passage of the street cars is thus impeded, the cars must wait.⁸⁵

A consent in writing under seal for a nominal consideration duly executed by a property owner permitting an electric railroad to construct its road on a highway running through the land

(81) *Hinnershitz v. United Traction Co.*, 206 Pa., 91 (1903).

(82) *Minnich v. Lancaster, M. & N. H. Ry. Co.*, 24 Pa. C. C., 1900).

(83) *Cobb v. Warren St. Ry. Co.*, 218 Pa., 366 (1907).

(84) *North Penna. R. R. Co. v. Inland Traction Co.*, 205 Pa., 1903).

(85) *Minnich v. Lancaster, M. & N. H. Ry. Co.*, 24 Pa. C. C., 1900).

(86) *Rafferty v. Central Traction Co.*, 147 Pa., 579 (1892).

on consenting, and to operate the same, is irrevocable and such person's heirs even though he die before the work of section begins.⁸⁷

mission given to construct and operate a street railway common a public highway by an abutting property owner is to the limits of the highway as marked by the fence line at the time of granting the permission, and cannot be affected by any change that some years before that date the highway was of width.⁸⁸

Street railway companies constructing their roads on streets or highways within townships of the first class, formed under the provisions of the Act of April 26, 1889, P. L., 104, are required to obtain the consent of the owners of property abutting on said streets the same as in other townships.⁸⁹

Consent of Abutting Property Owners on Both Sides of a Road Not Necessary.

A street railway company having obtained the consent of the owners of property abutting on one side of a road and other necessary consents may construct its line on that side of the road without the consent of the owners of property abutting on the other side.⁹⁰

Street Railway Companies May Not Use Portions of the Tracks of Other Companies Without the Consent of Such Companies.

Section 4, of the Act of May 14, 1889, P. L., 211, as amended by the Act of May 21, 1895, giving to street railway companies the right to use not to exceed two thousand five hundred feet of the tracks of any other street railway company, was held to be unconstitutional, because it provided no adequate security for damages for the property taken, and because a statute cannot be enacted which gives to one corporation for profit the right to

Comlinson v. Trenton, New Hope, etc. St. Ry. Co., 15 D. R., 480

Comlinson v. Trenton, New Hope, etc. St. Ry. Co., 15 D. R., 480

Tempster v. United Traction Co., 205 Pa., 70 (1903).

North Penna. R. R. Co. v. Inland Traction Co., 205 Pa., 579

205 Pa. Super. Ct., 115. See *Cobb v. Warren St. Ry. Co.*, 218 Pa.,

115. See, further, Sec. 1520.

appropriate the property of another such company to precise same public uses, merely for the convenience and profit of company seeking to use such tracks.⁹¹

This decision led to the further amendment of the Act of 1903, Sec. 3, P. L., 368 (see Sec. 1507) *supra*, wherein provided that a passenger railway company shall have the right to use such portion of the single or double tracks of any other railway company as may be necessary to complete a circuit of its road or upon any of its branches or extensions, or to connect its road with its own branches and extensions or with the road of any other passenger railway company, with the consent of the said company owning such tracks.

1593. Street Railways Not Nuisances.

Street railway companies, having as much right to run cars on the streets of a city as other citizens have to drive over them with their horses and carriages, are not responsible for horses and carriages in fright at the movement of their cars.⁹²

A railway track laid upon a city street in good faith, under a corporate charter granted for the purpose, but not endangering the health or safety of the inhabitants, cannot be classed as a public nuisance which the city authorities may abate summarily without resort to the process of the law, even though, by reason of the manner of its construction, it may obstruct the street to such a degree as to amount to a nuisance.⁹³

Where the authorities of a city have declared such a track a public nuisance in violation of a municipal ordinance and a public nuisance abatement law have summarily undertaken to remove it by force, and the railway company prays for an injunction against such removal, the court will not apply by a cross-bill or otherwise for a legal adjustment of the matter, the injunction will be granted without regard to the merits of the controversy.⁹⁴

(91) Phila., Morton & S. St. Ry. Co.'s Petition, 203 Pa., 354 (1902). *Com. v. Uwchlan St. Ry. Co.*, 203 Pa., 608 (1902).

(92) *Hazel v. People's Pass. Ry. Co.*, 132 Pa., 96 (1890); *Pitts. Southern St. Ry. Co. v. Taylor*, 104 Pa., 95; *Easton, S. E. & W. E. Pass. Ry. Co. v. Easton City*, 133 Pa., 1890.

(93) *Easton, S. E. & W. E. Pass. Ry. Co. v. Easton City*, 133 Pa., 1890. (94) *Easton, S. E. & W. E. Pass. Ry. Co. v. Easton City*, 133 Pa., 1890. *Pgh. & Charleroi St. Ry. Co. v. Monongahela City et al.*, 12 D. (1903).

street railway company was authorized by borough authority to occupy a public street, but on condition that its track should be laid upon the center line thereof, and in such manner that vehicles should cross without hindrance. The track was so laid, but, in an open space, formed by the intersection of other streets, there was a slight deflection of the track from the center line, to the detriment of the property of the company. The company being indicted for maintaining a nuisance in unlawfully obstructing the street by the use of its track, held, in the absence of any averment that the use of the track or its position interfered in point of fact with public travel, in any respect, the mere location of it did not constitute a nuisance.⁹⁵

Although the unauthorized occupation of a public street by a street railway track may be regarded as a nuisance *per se*, which will be enjoined, an injunction against it will not be granted at the suit of a private citizen or corporation, unless the plaintiff can make out a case of special damage.⁹⁶

Where Street Railway Companies Build Their Tracks on Highways Without Having Obtained the Consent of Abutting Property Owners.

A street railway was built upon a turnpike without the consent of the township authorities and without the consent of or compensation to the abutting property owners for the additional servitude. In 1887, upon the completion of the construction an owner of abutting property filed a bill in equity looking to compensation. Two years after the completion of the road he amended his bill so as to ask for an injunction. In 1890, meantime the township authorities had ratified the use of the street by the railway. Held, that in view of the rights of the public, an injunction could not be awarded; that plaintiff was entitled to damages, and, in ascertaining such damages, inquiry should be made of the practicability of constructing crossings on the street railway as to reduce to the smallest practicable extent the inconvenience and obstruction suffered by the plaintiff in going from his fields to his fields.⁹⁷

Com. v. Wilkes-Barre & Kingston St. Ry. Co., 127 Pa., 278 (1889).
Larimer & Lincoln St. Ry. Co. v. Larimer St. Ry. Co., 137 Pa., 533

Heilman v. Lebanon & Annville St. Ry. Co., 175 Pa., 188 (1896);
 affirmed: 180 Pa., 627 (1897). Case originated: 145 Pa., 101 (1891).

Where a street railway locates and constructs its line on a public road without the consent of the abutting property owner, the measure of damages is the depreciation in the value of the property, as the result of the change of grade, and the construction and maintenance of the railway. Its liability is the same as if it had obtained the consent of such owners and given bonds to compensate them for such injuries to their property as its location and construction might inflict.⁹⁸

The measure of damages to an abutting property owner by the construction of a street railway on a highway, is the difference between the value of his property before the construction of the railway, and its value thereafter.⁹⁹

But where a street railway company wilfully and maliciously lays its tracks upon a highway against the protest of an abutting property owner, so as to injure his lands and buildings, the measure of damages is not the same as in a case where a corporation enters on lands in the lawful exercise of the right of eminent domain.¹⁰⁰

In such a case the owner having brought one suit for damages resulting from the construction of the road and its operation on a certain date, may afterwards bring a suit to recover for damages subsequently incurred.¹

Where a street railway has been constructed over a highway without the consent of abutting property owners, and such highway is in course of lawful operation, an injunction to cause the removal of its tracks will not issue at the petition of such property owner. His remedy is an action of trespass for damages, and not an action of ejectment, since he, himself, has no right of possession,² but equity will interpose to protect him if he comes at the proper time, by enjoining the construction until his damages have been paid or secured to his satisfaction.³ An injunction

(98) *Thompson et ux. v. Citizens' Traction Co.*, 181 Pa., 131 (1897).

(99) *Osborne v. Del. Co. & Phila. Elec. Ry.*, 9 Pa. Super. Ct., 189 (1899).

(100) *Becker v. Lebanon & Myerstown St. Ry. Co.*, 25 Pa. Super. Ct., 367 (1904).

(1) *Becker v. Lebanon & Myerstown St. Ry. Co.*, 25 Pa. Super. Ct., 367 (1904). See, however, *Same v. Same*, 30 Pa. Super. Ct., 546 (1906).

(2) *Becker v. Lebanon & Myerstown St. Ry. Co.*, 188 Pa., 484 (1900). *Same v. Same*, 195 Pa., 502 (1900).

(3) *Penna. R. R. Co. v. Montg. Co. Pass. Ry. Co.*, 167 Pa., 62 (1897). *Thompson et ux. v. Citizens' Traction Co.*, 181 Pa., 131 (1897).

the completion of the tracks of a street railway over a highway will not be made permanent, however, at the suit of an abutting property owner, where the property was acquired by such owner, after the verbal consent of the prior owner to the construction of the track, with the object of harassing the railway company.

In respect to a mere crossing, a railroad company is not an abutting landowner to a street railway company.⁵

The ownership of land occupied by its tracks, by a railroad company in fee, gives it no standing to exclude a street railway company from the use of a highway crossing said land.⁶

A corporation which has assumed the duty of making and repairing highways, under the provisions of the Act of June 12, 1837, P. L., 451, has a standing in a court of equity to object to the construction of an electric railway upon one of the roads it is bound to keep in repair.⁷

Occupancy of Turnpikes by Street Railways.

Sec. 17 of the Act of May 14, 1889, P. L., 211, gave street passenger railway companies the right to ascertain and define such easements as they might deem expedient over, along and upon any turnpike or turnpikes. This provision was held to be unconstitutional,⁸ because the said section provided that such companies could not enter upon a turnpike without payment or security for the amount of just compensation to the turnpike company, and if the decision on appeal was for more than the award of viewers the plaintiff had no security for payment. Street railway companies, therefore, could not enter upon and occupy turnpikes without the consent of the companies owning the same.

The said section of the Act of 1889 was amended by Sec. 7 of the Act of May 3, 1905, P. L., 378, which provides a method for

⁵ *Messner v. Lykens & Williams Valley St. Ry. Co.*, 13 Pa. Super. Ct., 1900).

⁶ *Penna. R. R. Co. v. Greensburg, J. & P. St. Ry. Co.*, 176 Pa., 559 (1900).

⁷ *Williams Valley R. R. Co. v. Lykens & Williams Valley St. Ry. Co.*, 176 Pa., 552 (1899).

⁸ *Lehigh Coal & Nav. Co. v. Inter-County St. Ry.*, 167 Pa., 75 (1900).

⁹ *Harrisburg C. & Ch. Tpk. Rd. Co. v. Harrisburg & M. Elec. St. Ry. Co.*, 177 Pa., 585 (1896).

ascertaining damages in such cases and for the giving of security before entry upon turnpikes. See Sec. 1510.

The Act of June 1, 1907, P. L., 368, confers upon street railway companies the right of eminent domain and regulates the manner in which they shall enter upon streets and highways in cities, boroughs and townships, but it does not, apparently, supersede Sec. 7, of the Act of May 3, 1905, as to the method by which street railways shall enter upon and operate on a turnpike.

Prior to the enactment of Sec. 7 of the Act of May 3, 1905, it was held that the consent of abutting property owners was necessary to the construction of a street railway upon turnpikes upon the ground that the right of eminent domain given by Sec. 17 of the Act of May 14, 1889, P. L., 211, to passenger railway companies to enter upon turnpikes did not include a right to take the soil under the turnpikes as against the abutting property owners.

Sec. 7 of the Act of May 3, 1905, does not seem to confer a greater power than to take an easement over the turnpikes. In being the case the consent of abutting property owners on turnpikes is undoubtedly necessary under the provisions of the Act of 1905.

The following decisions relative to the occupancy of turnpikes by street railway companies were rendered prior to the passage of the Act of 1907.

The right of eminent domain given by Sec. 17, of the Act of May 14, 1889, P. L., 211, to passenger railways as to turnpikes does not include the right to the soil under the turnpike, and the consent of abutting property holders is necessary to the construction of a railway upon a turnpike.¹⁰

Sec. 17 of the Act of May 14, 1889, P. L., 211, is unconstitutional so far as it undertakes to confer upon a street railway company the right of laying tracks upon a turnpike without payment or security for the payment of just compensation to the turnpike company, because, if the verdict on appeal is for more than the award of the viewers, the plaintiff has no security for payment. Where a street railway company paid into court the damages found by the viewers, but did not give security for such damages as might be found due on appeal, held, that the lower court

(9) *Hinnershitz v. United Traction Co.*, 206 Pa., 91 (1903).

(10) *Hinnershitz v. United Traction Co.*, 206 Pa., 91 (1903).

olving an injunction which the turnpike company had secured before the condemnation proceedings were begun.¹¹

Extent of the injury in occupying a turnpike is immaterial. Invasion is without right, and fixes upon it for all time the remedy given to a street railway company, the remedy at law is adequate and equity will interfere.¹²

Turnpike company whose road is about to be appropriated by a street railway company may set up, as an objection to the appropriation, that the consent of the local authorities has not been given to the construction of the railway.¹³

A street railway company has no right to construct its railway within the limits of a borough, upon the bed of a turnpike road which is also a street, without the consent of the borough authorities, although the turnpike company may have consented.¹⁴

A street passenger railway company may make no change in the grade of a turnpike, except such as is reasonably necessary. Its rails must conform to the grade of the turnpike as closely as is practicable. It is not bound to use a flat rail on so much of the line as may properly be called a country road, but must lay it so as to do as little injury to the turnpike and hinder travel as possible.¹⁵

A street railway company which has operated a horse railway upon the roadbed of a turnpike company, has the corporate power to enter into a contract with the turnpike company, when the former constructs an electric railway, to compensate the latter for the increased servitude imposed upon the property.¹⁶

A street railway company undertook to build its tracks for a distance of 1250 feet upon a turnpike, but was permanently enjoined from doing, and accordingly abandoned the route over and be-

Harrisburg, C. & Ch. Tpk. Co. v. Harrisburg & M. Elec. Ry. Co., 10 Pa. C. C., 585 (1896). See Sec. 1510.

Minnich v. Lancaster, M. & N. H. Ry. Co., 24 Pa. C. C., 312

Harrisburg & M. Elec. Ry. Co. v. Harrisburg C. & Ch. Tpk. Co., 10 Pa. C. C., 389 (1894); *Johnstown & Scalp Level Tpk. Co. v. Johnstown & M. Ry. Co.*, 4 D. R., 594 (1895).

Steelton Borough v. East Harrisburg Pass. Ry. Co., 11 Pa. C. C., 22 (1892).

Berks & Dauphin Tpk. Road Co. v. Lebanon & Myerstown St. Ry. Co., 10 D. R., 55 (1893).

Little Saw Mill Valley Tpk. Co. v. Fed. St. & P. V. Ry. Co., 194 Pa. C. C., 1 (1899).

yond the pike. Another company was formed for the purpose of constructing a road along the abandoned part of the first company's route, except the part contemplated over the turnpike. As the two companies did not connect, the 1250 feet of turnpike between their nearest termini. A railroad charter under the act of 1868 was then taken out, and a right of way parallel to the turnpike for said distance of 1250 feet was condemned over private property. It was sought to enjoin the railroad company from condemning such property. Held, there being no evidence that the railroad company was incorporated to continue the line of street railway companies, and none that there was any attempt to evade the prior decree of the court relative to the non-occupation of the turnpike, that the railroad had power to construct its line over said route. Not decided, whether, when built, it can be operated as a street railway in connection with the other railway companies.¹⁷

"In *Gaw v. Bristol & Bridgewater Railroad Company*, 196 Pa., 442, upon which he (the judge sitting below) seems to have relied, it was distinctly found as a fact, upon sufficient evidence, that it had not been shown that the intention of the company was to operate a railroad as a street passenger railway only, and not as a street railroad, within the meaning of the law." A railroad corporation formed under the general Railroad Act of April 4, 1868, may not operate a street passenger railway.¹⁸

A turnpike company formed by special act prior to 1874 had no right to operate a street railway upon its roadbed, a right which it never exercised. A street railway company sought to construct a line over said roadbed, under a charter obtained for that purpose under the Act of 1889. A rule to quash condemnation proceedings was granted below. Held, that the question whether or not the railway franchise of the turnpike company had been forfeited by non-user could be raised only in a direct proceeding by the Commonwealth, and could not be raised by the street railway company in this proceeding; that Art. XVI of the Constitution did not apply to a going concern at the time of the adoption of the Constitution, though such corporation had a franchise aside from that which it exercised, which it did not then use; that until

(17) *Gaw v. Bristol & Bridgewater R. R. Co.*, 196 Pa., 442 (1900).

(18) *Mory v. Oley Valley Railway Company*, 199 Pa., 152 (1901). The law is now otherwise, however. See Sec. 1583.

e ousted the company from such franchise by quo warranto, street railway company could not lay its tracks upon the road- of the turnpike, it not being a "street or highway upon which track is laid or authorized to be laid, or to be extended under existing charter."¹⁹

turnpike company, and a trolley company occupying a turn- under a lease, have a property interest in the road which can- be interfered with or encumbered, under Art. 1, Sec. 10, of Constitution, without just compensation first made or secured. construction of a telephone line along the side of a pike, the middle or side of which is occupied by a trolley rail- imposes an additional servitude upon the turnpike and trol- companies, and will be enjoined until just compensation to is made or secured.²⁰

men a turnpike company, owning also the right to lay and ain passenger railway tracks on its turnpike, leases to a mu- nality all the interest of the company in that portion of the ke occupying the bed of a street, as laid down within the of said municipality, the right to lay and maintain passenger ay tracks within the area occupied by the bed of the street is quished, and the city may subsequently grant an exclusive to a street railway company organized for the purpose of ing a street railway thereon.²¹

turnpike company, the road of which is occupied by a street y company, under the Act of May 14, 1889, may recover nsation for the use and occupation of its road, including all done to the property which is the immediate and direct quence of the occupation and use. The damage is not meas- by the additional cost of maintenance only, but by the depre- n in value of the property as a whole. If the presence of acks and cars cause those who otherwise would have used ad to abandon its use in whole or part, the earning capacity ctly affected, and the company may show the decrease in its es and the market value of its capital stock, as evidence of age sustained. But there should be excluded any loss of

Phila. & Merion Railway Company's Petition, 187 Pa., 123 (1898).
Lanc. & Susquehanna Tpk. Rd. Co. v. Columbia Telephone Co.,
R., 322 (1900).

West Phila. Pass. Ry. Co. v. Phila. & West Chester Tpk. Rd. Co.,
C. C., 225 (1897).

revenue caused by new and improved facilities for travel, and the losses resulting from the fact that persons who would otherwise have driven over the pike, ride over it in the cars of the railway company.²²

A court of equity will by mandatory injunction enforce the performance of a contract between a street railway company and a turnpike road company so as to compel the former to lay its tracks at the height and in the location specified in the contract, and to construct a solid and smooth surface between the existing and the improved portion of the road as stipulated in the contract.²³

1596. Occupancy of Bridges by Street Railways.²⁴

A bridge built for public accommodation, by a corporation formed under the Act of 1874, is a highway within the meaning of the Act of May 14, 1889, P. L., 211, and a court of equity has jurisdiction of a bill filed by a street railway company to restrain the use of the bridge for the operation of the railway.²⁴

The natural and reasonable construction of the Act of May 14, 1889, is, that the streets or highways mentioned therein include the bridges connecting with and constituting portions of them.

The use of a bridge by a railway company which operates a road by electricity does not constitute a taking of or an injury to the property of the bridge company in the exercise of its police power or eminent domain. It is a use which is reasonably consistent with the purpose for which the bridge was erected, and is necessary for public travel and accommodation.²⁵

Where a right is claimed by a passenger railway company to string wires for the purpose of carrying its electric system across transportation across the bridge of an incorporated bridge company,

(22) Allentown & Coopersburg Tpk. Co. v. Lehigh Valley Traction Co., 174 Pa., 273 (1896).

(23) Chester & Darby Telford Road Co. v. Chester, D. & Philadelphia Co., 217 Pa., 272 (1907).

(23*) See Sec. 1494.

(24) Pitts. & W. End Pass. Ry. Co. v. Point Bridge Co., 165 Pa., 189 (1894).

(25) Pitts. & W. End Pass. Ry. Co. v. Point Bridge Co., 165 Pa., 189 (1894).

(26) Pitts. & W. End Pass. Ry. Co. v. Point Bridge Co., 165 Pa., 189 (1894).

which right is denied by the company, a court of equity has jurisdiction both to determine the right and to fix the compensation to be paid for the use of the bridge.²⁷

Where the proper local and municipal authorities have given consent to the use of a county bridge by a street railway, the county commissioners cannot refuse the use of the same to the company, and if they do refuse their consent the court may appoint an engineer to examine and report what it will be necessary to strengthen the bridge for street railway traffic, and, on the basis of this report, the court may permit the company to enter the bridge to strengthen it, and when this is done to the satisfaction of the court, permit the company to use the bridge, on giving security for repairs, rent and performance of conditions which municipal consent was given.²⁸

When proper local and municipal authorities have given their consent to the use by a street railway company of a highway of which a county bridge forms a part, the county commissioners cannot arbitrarily refuse the use of the bridge to the company. If they do so refuse, the matter may be controlled by the court, and the company permitted to proceed, on giving security that it will comply with all agreements between it and the authorities, or, in default thereof, by the requirements of the court, as to the manner of use, rental, repairs, etc.²⁹

It would seem, that where a county bridge is within the limits of a city, a street railway company which has obtained permission to use its tracks in said city, may use such bridge without the consent of the county commissioners, but if the bridge is not strong enough to sustain street railway traffic, nor capacious enough to accommodate both general public travel and the company's cars, the company may not use it. Neither the city nor the county is bound to provide the company with a suitable bridge. If, however, the bridge may be strengthened and enlarged to the necessary extent, the only remedy seems to be, if the parties cannot

Id. Pitts. & W. End Pass. Ry. Co. v. Point Bridge Co., 165 Pa., 37

Berks County v. Reading City Pass. Railway Cos., 167 Pa., 102
overruling *Venango Co. Com'rs v. Oil City St. Ry. Co.*, 3 D. R.,

Lawrence County v. New Castle Elec. St. Ry. Co. & New Castle Co., 8 Pa. Super. Ct., 313 (1898).

come to an agreement, one similar to that afforded in the case of *Berks County v. Reading City*, 167 Pa., 188, *supra*.³⁰

A bridge company authorized to construct a greatly needed public bridge, and proceeding to construct the same in accordance with its charter, for the use of the general public, will not be enjoined from building the bridge because a street railway company may have inspired the formation of the bridge company for the very purpose of obtaining passage across a ravine, otherwise obtainable because of the objection of property owners.³¹

A street railway company incorporated under the provisions of a special act of assembly was authorized by an ordinance of the city of Philadelphia to construct and operate its tracks on a bridge owned by that city. Subsequently another street railway was incorporated under the provisions of the Act of May 14, 1889, a part of the chartered route of which lay over the said bridge. Held, that the proviso to the fourth section of the Act of May 14, 1889, § 211, did not apply so as to prevent the said company from a joint occupancy of the bridge with the company first named.³²

A street railway may not lay its tracks on a bridge which is a part of a highway crossing a canal, which bridge and the land upon which it is located is owned in fee by the canal company without the consent of the said company.³³

Directors of a bridge company may contract with a street railway for the use of their bridge, provided that such use does not interfere with the use of the bridge by the public.³⁴

1597. Right of Street Railway Companies to Operate Other Than on Public Streets and Highways.

The Act of May 14, 1889, did not expressly confer upon street railway companies the right to acquire private property and construct and operate their roads thereon. It was finally held by the courts, however, that they might so construct and operate if it was necessary or convenient for them to do so. The deci-

(30) *La Rue et al. v. Oil City St. Pass. Ry. Co.*, 170 Pa., 249 (1890).

(31) *Oliver v. Thompson's Run Bridge Co.*, 197 Pa., 344 (1900).

(32) *Hestonville, M. & F. St. Ry. Co. v. 42d St. & W. P. Ry. Co.*, 10 Pa. R., 343 (1895).

(33) *Penna. Canal Co. v. Lewisburg, M. & W. Pass. Ry. Co.*, 20 Pa. 282; 10 Pa. Super. Ct., 413 (1899), reversing *Same v. Same*, 20 Pa. 550 (1898); 7 D. R., 244.

(34) *Hasson v. Venango Bridge Co.*, 11 Pa. C. C., 383 (1892).

effect are given in the latter portion of this section. Sec. 1517, of the Act of June 7, 1901, P. L., 521, supra, Sec. 1517, confers on street railway companies the power to acquire property by purchase or otherwise for the purpose of making connections with any portion of their tracks whether main line, branches or extensions, and the Act of June 12, 1907, P. L., 526, Sec. 1519, extends the power to acquire property and construct and operate thereon to all cases where the corporation may find it necessary to do so. The proviso to this act provides that it shall not be construed to confer the right of eminent domain, where the right had already been expressly conferred by the prior act of June 1, 1907, P. L., 368, Sec. 1520. This proviso, however, evidently does not operate to repeal or modify the provisions of the Act of June 1, 1907, which expressly gives the right of eminent domain and therefore the right to construct and operate wholly or in part upon land to be acquired by street railway companies, whether by purchase or through the exercise of said right. It is strenuously contended on the part of appellant that the Act of May 14, 1889, P. L., 211, under which the defendants were chartered gives no authority for the building of a passenger railway through boroughs or over township or country roads, and especially through private property, but only upon streets properly and strictly so called. Much reliance is placed upon *Penna. R. R. & Montgomery Co. Ry. Co.*, 167 Pa., 62, to sustain this contention. But no such point was involved nor any such decision made in that case. The same may be said of the group of cases decided at the same time. . . . While no case has yet called for an exact definition of the words 'street or highway' in the Act of 1909, or the limitations in that respect on railways incorporated under that act, it is manifest that the narrow interpretation contended for by appellant cannot be sustained." 35

As we said in *Rahn Township v. Railway Company*, 167 Pa., 102, that passenger railways under the Act of 1889, 'may diverge a short distance where the conformation of the surface or the course of streams makes it necessary in order to avoid discomfort or danger to the traveling public,' and, it may be added, to avoid inconvenient crossings, or for any other reason amounting to necessity, that is the same thing in such matters, great public conveni-

Penna. R. R. Co. v. Greensburg, J. & P. St. Ry. Co., 176 Pa., 559

ence. The occasion of such diversion and its extent are questions of location, and the decision of them is primarily within the discretion of the railway company. If the variance is greater than necessary, or the charter route itself is open to objection, the Commonwealth alone can be heard to make it, in the interest of the general public."³⁶

A reasonable divergence from the chartered route of a railway company is in the discretion of such company, and whether such divergence has been exceeded does not concern township officers, but must be left to the Commonwealth through its Attorney General.³⁷

"The right of the defendants to diverge from the highway to construct their railway on property which they had secured for that purpose in order to avoid a grade crossing need not be discussed, in view of the decisions in *Rahn Township v. Railway Co.*, 167 Pa., 84, and *Pa. R. R. Co. v. Railway Co.*, 176 Pa., 53. In the first of these cases it was said that passenger railways under the Act of 1889 'may diverge for a short distance where the formation of the surface or the position of streams make it necessary . . . ,' and in the latter, that to these reasons may be added, to avoid grade crossings, or for any other reason amounting to necessity, or what is the same thing in such matters, 'great public convenience.' "³⁸

But in a case decided after all of the preceding cases, the last two, the Supreme Court said:

"In brief they (street railway companies) in the selection of the route, either of their main line or of any extension or branch thereof, are expressly confined to established streets or other avenues in cities and boroughs, and to public highways in townships, subject to such further restrictions, even as to the location of crossings as are specified in the act. . . . It is impossible to reach any other conclusion than that the Legislature . . . intended to withhold . . . everything in the nature of

(36) *Penna. R. R. Co. v. Greensburg, J. & P. S. Ry. Co.*, 176 Pa., 53 (1896); *Pitts. Junc. R. R. Co. v. Fort Pitt St. Pass. Ry. Co.*, 192 Pa., 1 (1899).

(37) *Jordan v. Washington & Canonsburg Ry. Co.*, 25 Pa. Sup., 564 (1904).

(38) *Penna. R. R. Co. v. Glenwood & Dravosburg Elec. St. Ry. Co.*, 227 Pa., 227 (1898); *Pitts. Junc. R. R. Co. v. Fort Pitt St. Pass. Ry. Co.*, 192 Pa., 44 (1899).

commission, under which they might assert the right to locate, construct and operate street railroads wherever they pleased."³⁹

4. Crossings of Railroad Tracts.⁴⁰

When such legal proceedings relate to crossings of lines of railroads by other railroads it shall be the duty of the courts of equity of this Commonwealth to ascertain and define, by their decree, the nature of such crossing which will inflict the least practical injury to the rights of the company owning the road which is intended to be crossed: and if in the judgment of such court it is reasonably practicable to avoid a grade crossing, they shall by process prevent a crossing at grade.⁴⁰

The Act of May 14, 1889, P. L., 211, providing that any street may be incorporated under it may cross at grade, diagonally or transversely any railroad operated by steam or otherwise, is subject to the Act of June 19, 1871, P. L., 1360, giving the court power to regulate grade crossings and directing them to prevent crossings at grade when reasonably practicable.⁴¹

The said act imposes on the court the duty (a) of ascertaining the method of crossing least injurious to the road crossed; (b) of settling by decree the adoption of such mode; (c) preventing crossings when practicable.⁴²

The Act of June 19, 1871, P. L., 1360, should be held to preclude all grade crossings except in cases of imperious necessity, and the necessity must not be of the railroad company's own creation, but may be by locating the line in one place when another route is

³⁹ Northern Cent. Ry. Co. v. Harrisburg & M. Elec. Ry. Co., 177 Pa., 1896).

⁴⁰ See Sec. 1511.

⁴¹ Sec. 2, Act June 19, 1871, P. L., 1361. This Act gives the courts authority to regulate grade crossings over ordinary streets and highways. Phila. & Balto. Central R. R. Co. v. Upper Darby Township, 202 Pa., 1902. See Sec. 1511.

⁴² Penna. R. R. Co. v. Braddock Elec. Ry. Co., 152 Pa., 116 (1893); Junc. R. R. Co. v. Fort Pitt Pass. Ry. Co., 192 Pa., 44 (1899); Harrisburg & M. Elec. Ry. Co. v. Harrisburg, Carlisle & C. Tpk. Co., 15 Pa. C. C., 1894. See Du Bois Trac. Pass. Ry. Co. v. Buffalo, Roch. & Pgh. Ry. Co., 149 Pa., 1 (1892); 10 Pa. C. C., 401 (1891); Penna. R. R. Co. v. Braddock Elec. Ry. Co., 11 Pa. C. C., 163 (1891); Penna. R. R. Co. et al. v. Urban Rapid Transit Co., 11 Pa. C. C., 591 (1892).

⁴³ Balto. & Hsbg. Ry. Co. v. Hanover & McSherrystown St. Ry. Co., 11 Pa. C. C., 291 (1893).

practicable. The fact that the capital of a railroad is limited is not sufficient to justify a grade crossing.⁴³ And the case is the same as to street railway companies.⁴⁴

Grade crossings will not be authorized where it appears that there are no physical obstacles to the erection of an overhead crossing, and when the cost of constructing such an overhead crossing will not be excessive.⁴⁵

In passing upon the practicability of an overhead crossing, the court will not consider the expense of the structure, its unsightliness, nor that damages which may have to be paid to owners of private property because of its erection, nor that the structure may frighten horses and obstruct the view of passing trains, nor that local sentiment is in favor of a grade crossing. Grade crossings will only be permitted in cases of manifest and unavoidable necessity.⁴⁶

Under the Act of May 14, 1889, a street railway company has no right to construct, maintain and operate its road across the tracks of a railroad, without the consent and against the protest of the railroad, at a point where its roadway is not crossed by a public highway. Sec. 18 of that act is applicable only to crossings at points where a railroad is crossed by a street or highway on which the street railway is located.⁴⁷

But where a bill was filed to prevent defendants from constructing a bridge over the tracks and property of the plaintiffs at a point where there was no street or highway, and also to prevent

(43) *Perry Co. R. R. Extension Co. v. Newport & Sherman's Valley R. Co.*, 150 Pa., 193 (1892).

(44) *Penna. R. R. Co. v. Braddock Elec. Ry. Co.*, 152 Pa., 116 (1893); *Scranton & Pittston Trac. Co. v. Del. & Hud. Canal Co.*, 180 Pa., 180 (1897); *Altoona & P. Connect. R. R. v. Tyrone & Clearfield R. R. Co.*, 180 Pa., 623 (1894).

(45) *Penna. R. R. Co. v. Warren St. Ry. Co.*, 188 Pa., 74 (1898); *Cent. & Hud. Riv. R. R. Co. v. Warren St. Ry. Co.*, 188 Pa., 85 (1898); *Union Ry. Co. & Chester Trac. Co. v. Phila. & Balto. R. R. Co.*, 188 Pa., 115 (1898); *Williams Valley R. R. Co. v. Lykens & Williams Valley Ry. Co.*, 192 Pa., 552 (1899); and cases cited in preceding notes.

(46) *B. & O. R. R. Co. v. Butler Pass. Ry. Co.*, 207 Pa., 406 (1901); *Pgh. & L. E. R. R. Co. v. Lawrence County*, 198 Pa., 1 (1901).

(47) *North. Cent. Ry. Co. v. Harrisburg & Mech. Elec. Ry. Co.*, 170 Pa., 142 (1896); *Cumberland Valley R. R. Co. v. Harrisburg & Mech. Elec. Ry. Co.*, Id., 155; 186 Pa., 91 (1898); *Cumberland Valley R. R. Co. v. Harrisburg & Mech. Elec. Ry. Co.*, 39 W. N. C., 85 (1896).

struction of an overhead way across a street in which the
ffs owned property in fee, and the evidence showed that the
ffs had stood by while the tracks were being laid in front of
property, without objection, but sought to prevent a grade
g on the ground that it was reasonably possible to make an
ad crossing, one of the plans for which, suggested by the
ffs, was adopted by the defendants who spent \$40,000 in
g it out, held, that a decree refusing to grant an injunc-
as properly issued.⁴⁸

et passenger railways having the right to cross railroads at
have a *fortiori*, the right to cross overhead,⁴⁹ provided as
above, that it be at a highway or street crossing. Where it
s that the construction of a bridge over an existing railroad
crossing of a public highway, in order to accommodate
street railway cars and other public travel along the high-
in relief of the railroad company—that is, that the grade
g is dangerous and that a bridge should be built, in any
he railroad company must pay its due proportion of the
e of building such a bridge. The fact that it constructed
le-crossing four years before the filing of the bill, does not
a right to continue such crossing for all time nor under
d conditions.⁵⁰

fact that enjoining a street railway from a grade crossing
volve the construction of an overhead bridge, which will
an additional servitude upon abutting property, for which
ner may recover damages from the company, has no weight
e courts in determining what is reasonably practicable, as
to a grade-crossing under the Act of June 19, 1871. In
ining what is "reasonably practicable," the only matter for
rt to consider is, the physical problem to be solved by the
ce warranted from the character of the two roads, the busi-
one upon them, the topography of the territory and like

Penna. R. R. Co. v. Glenwood & Dravosburg Elec. St. Ry. Co., 184
(1898).

Penna. R. R. Co. v. Greensburg, J. & P. St. Ry. Co., 176 Pa., 559

Penna. R. R. Co. v. Conshohocken Ry. Co., 15 Pa. C. C., 454

Scranton & Pittston Trac. Co. v. Del. & Hud. Canal Co., 180 Pa.,
7).

Both a diagonal and a transverse crossing are expressly allowed by the Act of May 14, 1889, and there is nothing contained which prohibits such a reasonable elongation of the connecting track, as is essential to reach the opposite point of crossing. In this case the respondent crossed the track of appeal nearly a right angle and then ran parallel with its track on the same street for two hundred and twenty feet. Held, to be permissible, under the Act of May 14, 1889.⁵²

Where it appears that the road on which a street railway is almost level for between three and four hundred feet on one side of the railroad, that an overhead bridge presents no engineering difficulties in its construction or use, and that the cost of a bridge would not exceed \$10,000, a grade crossing will be joined.⁵³

A street railway company will not be disturbed in the construction of a bridge to avoid an existing grade crossing, where plans were approved by the township, and the supervisors show any departure from the agreement entered into between the township and the railway company, in the absence of any evidence to show that the established grade of the highway will be interfered with in the convenient use of the public road.⁵⁴

A railroad company has a standing in equity to restrain a street railway company from crossing at grade a branch which is located but not constructed, until the rights of the parties to the crossing are adjusted.⁵⁵

1599. Requirements as to Paving, Repairing, etc., of Streets by Street Railway Companies.

"The authority under which streets are occupied, unless expressly relieving such companies from the duty of keeping in repair those portions of the streets occupied by their tracks, comes with it a liability on their part to do so. . . . As between a street railway company and a municipality whose streets are occupied by such company, the duty no longer rests upon the

(52) *Citizens' Pass. Ry. Co. v. East Harrisburg Pass. Ry. Co.*, 18 Pa. 274 (1894).

(53) *Williams Valley Railroad Co. v. Lykens & Williams Valley Railway Co.*, 192 Pa., 552 (1899).

(54) *Plymouth v. Railway*, 18 Montg., 100 (1902).

(55) *Ohio River Junction R. R. Co. v. Freedom & Conway Elec. Co.*, 204 Pa., 127 (1902).

ty of keeping in repair those portions of the streets used by company, but devolves upon the company acquiring the right to use them for its corporate purposes." ⁵⁶

An action by a city against a street railway company to recover the cost of paving a portion of a street with asphalt, the company may not recover unless the jury finds (1) the necessity and expediency of the repairs; (2) notice to the company by the city to pave the tracks by paving; and (3) that the paving was reasonable, proper and necessary, considering the condition of the remaining portions of the street and the condition in which the city was bound to place it. ⁵⁷

A borough ordinance granting to a street railway company the right to use streets provided that the company "shall at all times keep the space between their tracks and eighteen inches outside thereof in good repair, and to conform to the macadamizing or paving in the borough." Another section provided "that whenever the borough shall hereafter pave or macadamize any street or streets along the line of said railway, with asphalt blocks, granite sheeting or broken stone, the said street railway company, its successors or assigns, shall at the same time pave and macadamize the street occupied by the railway, that is to say, between the tracks of said railway and eighteen inches outside thereof, on each side of said railway with the same kind of blocks or material with which the borough paves and macadamizes the said streets or streets." A resolution of the borough council provided "by way of encouraging the construction of an efficient street railway in the borough, the railway company be relieved from the obligations of keeping in repair the street, streets or parts of streets occupied by their tracks until such time as said company shall either earn or pay a dividend to its stockholders on the capital stock of the company, which shall be paid up to the time of

Reading v. United Traction Co., 215 Pa., 250 (1906). But see *Transport v. Williamsport Passenger Railway Company*, 203 Pa., 1 (1905), in which it was held that a street railway company not required by its charter nor any valid ordinance to pave between its tracks, will not be held liable for any part of the costs of paving streets occupied by its tracks because it had notice of a contract between the city and a paving company to pave such streets, nor because its officers conferred with the city committee as to the grade nor because it paid, under protest, the cost of paving part of the streets.

Reading v. United Traction Company, 215 Pa., 250 (1906).

said earning or payment, or until such time as either or these contingencies shall happen." Held, that while the company was relieved from making ordinary repairs by the ordinance, it was bound under the ordinance to lay down with asphalt between its rails and eighteen inches outside of the rails, portions of the older streets of the borough from which the old macadamized pavement had been removed, and on which the borough had laid an asphalt pavement.⁵⁸

A borough ordinance provided that a railway company should reconstruct the streets upon which its track was laid with the same kind of material used by the borough authorities in reconstructing the remaining portions of said streets, between its tracks and at least six feet additional on the outside of the rails, and keep the same in good order and repair. Held, that the company was not obliged, after laying its tracks, to "reconstruct" the street once, and then after to keep it in good order, but that it was not obliged to lay down a new and improved pavement on demand of the borough authorities.⁵⁹

An ordinance provided that a street railway company should keep its tracks upon the grade of the street, maintain and keep in repair a road way of a certain width from the center of its tracks, and keep the same in repair, using the same material for such repair as the borough might use for the same purpose, or such other material as the borough should approve, and that the company should, on being notified, join with the borough in the improvement of any street by repairing or macadamizing the same as the borough might elect, and repair and macadamize the nine feet wide road provided for in the ordinance at its own cost. Held, that while the borough could not compel the company to pay the cost of a pavement different from that used by the borough, it could not require the company to pay the cost of putting its tracks upon the legal grade and its share of the cost of repairs as provided in the contract.⁶⁰

While a street railway company is required by its charter

(58) *West Chester Borough v. West Chester Street Ry. Co.*, 203 Pa. 101 (1903).

(59) *Norristown v. Norristown Pass. Ry. Co.*, 148 Pa., 87 (1885).
to the power of a borough to waive requirements as to pavement.
West Chester Borough v. West Chester St. Ry. Co., 203 Pa., 201 (1903).

(60) *Shamokin Boro. v. Shamokin St. Ry. Co.*, 178 Pa., 128 (1894).
39 W. N. C., 136.

finances of councils to pave streets occupied by its tracks, and duty is persistently neglected after repeated notices from the authorities, the city may do the paving and collect the cost from the company, and may stop the running of cars during the paving by poling off the streets, and the company cannot set off against the city's claim for paving any loss incurred by said stoppage of its cars.⁶¹

Where a street railway company is required by the ordinance granting its franchise to pave its tracks and to keep the paving in repair and to make no obstructions to municipal repairs or improvements, "and if tracks are to be removed or raised during improvements, the expenses thereof as well as any damage done to the tracks, shall be borne by the company," it is not compelled when the city takes up the pavement between the tracks to lay a sewer thereunder to replace the pavement.⁶²

Where a street railway company is authorized by the Legislature to construct and operate on the streets of a city, provided that the city consent and that such company shall be subject to the municipal ordinances relating to paving, and the city consents on condition that the company assume the cost of paving the streets on which it is to operate, abutting owners will be liable for the cost of paving, if the city relieve the railway company from complying with the conditions imposed.⁶³

A township may maintain a bill in equity against a street railway company to compel specific performance of a contract to keep the grade of a highway on the same grade as its railway, and to maintain a ditch for drainage on one side; but such company may not be compelled to fill its tracks level with the top of its rails, if by so doing the operation of the road would necessarily be seriously interfered with.⁶⁴

An act incorporating a street railway company provided that the company should be "subject to the ordinances of Philadelphia relating to the running of passenger railway cars." Held, that

) Philadelphia v. 13th & 15th Streets Pass. Ry. Co., 169 Pa., 269 (1902).

) Reading v. Reading & South Western Street Ry. Co., 19 Pa. Super. 102 (1902).

) Philadelphia to Use v. Bowman, 175 Pa., 91 (1896). See Same v. Bowman, 166 Pa., 393 (1895).

) West Mead Township v. Meadville & Cambridge Springs Ry. Co., 104 Pa. C. C., 104 (1904).

this provision did not impose upon the company the duty of keeping and keeping in repair the streets occupied by the tracks of the company, nor of repaving the same with improved pavement when required by the city.⁶⁵

Where a street railway company has occupied with its tracks the streets of a city, on condition that it pave the right of way and keep the same in good repair, or that it pave said right of way in a specified manner superior to the then paving of the streets, and keep said paving in good repair, the city can, upon the adoption of an improved pavement for the rest of the street, with the original paving of the right of way is incongruous and incompatible, and on notice thereof to the company—the city's requirement upon its right of way being out of repair—require it to replace the same with a pavement reasonably corresponding to the street pavement adopted,⁶⁶ but in the case of a street railway incorporated under a special charter providing that "said company in constructing said road shall conform to the grades then used, or hereafter to be by law used, of the several streets, roads, and avenues traversed by said road and keep the same in good repair at the proper expense of said company," where the company has so kept said streets in repair, it may not be required to replace them with a new and different kind of pavement adopted by the city in which it operates.⁶⁷

A street railway company was given permission to operate on the streets of a city on condition that it should keep the streets used by it "from curb to curb . . . in perpetual good repair, at the expense of the corporation" and "in a reasonable and satisfactory condition." A street used by the company was filled in by an unusual rain, with rock, earth, etc., from an adjacent street. Held, that the company was bound to remove the deposit from the street.⁶⁸

The Lombard and South Street Passenger Railway Company was incorporated by Act of May 16, 1861, to build and operate a street railway on said streets, the nineteenth section of said

(65) *Phila. v. Empire Pass. Ry. Co.*, 18 Pa. C. C., 81 (1896); 53.

(66) *Reading City v. United Traction Co.*, 202 Pa., 571 (1902); C. C., 629 (1900).

(67) *Williamsport v. Williamsport Pass. Ry. Co.*, 206 Pa., 65 (1901).

(68) *Pittsburgh & Birmingham Pass. Ry. Co. v. Pittsburgh*, 80 Pa. (1876).

siding "that the said company shall be subject to all the ordinances of the councils of said city." There was no provision to the effect that the consent of councils to the construction of the street should be obtained, but there was an ordinance of February 1860, prohibiting the removal of cobble-stone pavements from the highways of Pennsylvania, for the purpose of laying rails for passenger railway purposes, until the consent of the councils of Philadelphia should be procured thereto. Held, that the company could not construct its road without the assent of the councils, the Legislature being presumed to have passed the act of incorporation with knowledge of said ordinance.⁶⁹

Where a city has contracts with two street railway companies to use the street occupied by both, the city may sue one company for the paving done by the city on such street, and drive it to contribution against the other for contribution; or the city may sue for one-half in assumpsit. In the paving of intersections of streets occupied by different companies, each company should pay one-half.⁷⁰

A special act incorporating a street railway company subjected the company to the provisions of all ordinances then existing or thereafter to be passed, regulating passenger railways; and at the time of such incorporation there was in force a city ordinance imposing upon the companies the duty of paying the cost of paving any street, then occupied by them. Held, that the duty imposed by the act was the matter of such paving was one from which the company could not be relieved by act of councils.⁷¹

A street railway company required by ordinance to pave the full width of streets where it maintained sidings, whenever the street through which it operates paves the rest of the streets, may remove a siding before paving is begun, without being liable to pave the full width of the street where the siding was located, if, prior to the passage of the ordinance authorizing the paving of the streets of the borough, it gives notice of its intention to remove the siding, and further notifies the borough, three months before it incurred any liability, that the siding will be removed as soon as it is taken out of the ground.⁷²

Phila. v. Phila. & Lombard Sts. Pass. Ry. Co., 3 Grant, 403 (1863).

Phila. v. Second & Third Sts. Pass. Ry. Co., 13 Pa. C. C., 580

Phila. v. Evans, 139 Pa., 483 (1891).

Shamokin Boro. v. Shamokin & Mt. Carmel Elec. Ry. Co., 206 Pa., 303).

So, also, where a street railway contracts with individuals right of way over their premises agreeing to pave and curb portion of the right of way not covered by its tracks, but is compelled to abandon the location before any work has been done there because of its failure to obtain municipal consent, the owners of the premises are entitled to receive nominal damages only.⁷³

Where a city brings suit against a street railway company to recover the cost of paving streets occupied by the tracks of the company, and it appears that the company was under no contract, contractual or statutory obligation to pay the cost of paving such streets, the city may not, after the statute of limitations has run against its claim, be permitted to amend its statement of claim to aver that the company had by lease or merger acquired the assets and assumed the burdens of another railway company, so that by reason of such assumption of obligation it was liable for the paving. Such an averment introduces an entirely new cause of action.⁷⁴

Where the ordinances of a city provide that street railway companies shall pave or repave the highways when requested to do so or after notice, by a certain officer and that if the companies refuse to do so, the city may pave the same at their cost, the companies cannot recover the cost of such paving or repaving without showing a proper notice or request.⁷⁵

Where an ordinance granting the right to a street railway company to construct and operate upon certain streets specifically named, provides that, "on all highways traversed by said company which shall hereafter be improved said company shall pay the cost of the improvements between its tracks and lines of travel and one foot on each side thereof," the ordinance applies to streets occupied by the company whether named in the ordinance or not.⁷⁶

1800. Municipal Regulations—Licenses—Local Taxes.⁷⁷

Street railway companies may be required to pay a license fee for each of the poles erected by them, by a municipality, the

(73) *Hays v. Wilkinsburg & East Pittsburgh St. Ry. Co.*, 204 Pa. 101 (1903).

(74) *Phila. v. Hestonville, Mantua & F. R. Co.*, 203 Pa., 38 (1900).

(75) *Phila. v. Hestonville, Mantua & F. R. Co.*, 203 Pa., 38 (1900).

(76) *McKeesport v. Pitts., McK. & C. Ry. Co.*, 213 Pa., 542 (1905).

(77) See Sec. 752.

exercise of the police power, though they have been exempted from taxation for a number of years by ordinance.⁷⁸

An ordinance requiring such companies to sprinkle three feet six inches each way from the center of their tracks, summer and winter, was held unreasonable, and it was doubted whether any requirement as to sprinkling the streets could be lawfully imposed by ordinance.⁷⁹

The grant of a privilege to carry passengers in cars over the streets does not necessarily involve exemption from liability to municipal regulation. Corporations chartered to do business in a city are to be regarded as inhabitants of the city, and, in the absence of special exemption, subject to its ordinances. An ordinance of the city of Philadelphia requiring passenger cars to be licensed and to be licensed, on paying a stipulated sum for each car, is a police regulation, which may be enacted under an act authorizing councils to pass ordinances for the regulation of omnibuses.⁸⁰

The Act of May 23, 1889, P. L., 277, relative to cities of the second class, authorizes a tax upon or in respect to each car of a street railway company, and not a tax upon the business in which the company is engaged. It is not a license fee imposed under the police power, but a tax in the general sense, as decided in *Oil City Trust Company*, 151 Pa., 454. The said act does not violate the provision of the Constitution requiring uniformity of taxation. A provision in an ordinance imposing the tax, providing for a penalty for non-payment of the tax is not exclusive, so as to preclude a civil action for the recovery thereof.⁸¹

The value of the horses used by a street railway company in the operation of its cars enters into the value of the capital stock of the company on which it pays a tax to the State, and such horses are necessary to the exercise of the franchises of the corporation and are not taxable locally.⁸²

8) *McKeesport v. McKeesport & R. Pass. Ry. Co.*, 2 Pa. Super. Ct., (1896).

9) *Chester v. Chester Traction Co.*, 4 Pa. Super. Ct., 575 (1897), reversing the decision of the Court below, 5 D. R., 609.

10) *Frankford & Phila. Pass. Ry. Co. v. Phila.*, 58 Pa., 119 (1868); *Union City Pass. Ry. Co. v. Phila.*, 60 Pa., 445 (1869). See *Union City Pass. Ry. Co. v. Phila.*, 83 Pa., 429 (1877); (U. S. Sup. Ct.) 8 W. N. C., 377; *North Brad-
ford Boro. v. Second Ave. Traction Co.*, 8 Pa. Super. Ct., 233 (1898).

11) *Harrisburg City v. East Harrisburg Pass. Ry. Co.*, 4 D. R., 683 (1895).

12) *People's Pass. Ry. Co. v. Taylor*, 10 D. R., 343 (1901).

1601. Gauge of Street Railways.

A railway company chartered by special act which contains no restriction as to the gauge of its track, has the right to adopt the gauge in ordinary use, and if it adopt the narrow gauge at the time of building its road, and use the same continuously for a number of years thereafter, it is not thereby concluded from afterwards making any change in its gauge, or the character of its rails, as to its chartered rights.⁸³

1602. Motor Power of Street Railways.*

The Act of May 8, 1876, P. L., 147, relating to the power of passenger railways, in so far as it attempts to impose limitations in special charters of such companies, violates Art. III, Sec. 7, of the Constitution, and no such company, whose charter, granted before the passage of said act, restricts the use of horse power, can claim the right to use any other power under said act.⁸⁵

The Act of June 13, 1883, P. L., 123, relating to the use of cables for street railways; the Act of March 22, 1887, P. L., 10, relating to the use of electricity for the operation of street railways, and the Act of May 14, 1889, P. L., 211, confer no authority on a previously chartered street railway to operate its line by any other power than that mentioned in its charter, unless the provisions of said act are accepted, and no company which is limited in its charter to the use of horse power, and has not complied with the provisions of these acts can operate its line by the electric trolley system.⁸⁶

A street railway company formed under the Act of May 14, 1889, the charter of which authorized it to operate its road "by horse, cable or electrical power" may, with the consent of the directors, construct an overhead electric trolley system for moving cars,⁸⁷ but where the charter of a company so incorporated provided that it should be operated by horse power, held, that it

(83) *Millvale Borough v. Evergreen Railway Co.*, 131 Pa., 1 (1880).

(84) See Secs. 1551, 1552, 1583.

(85) *Watkin et al. v. West Phila. Pass. Ry. Co.*, 11 Pa. C. 1 (1892).

(86) *Watkin et al. v. West Phila. Pass. Ry. Co.*, 11 Pa. C. 1 (1892); 1 D. R., 463. See *Fritz v. Erie City Pass. Ry. Co.*, 155 Pa. 1 (1893).

(87) *Fox v. Catharine & Bainbridge Sts. Ry. Co.*, 1 D. R., 507 (1891).

even with the consent of councils, operate by the trolley sys-

where a city consents by councils to the operation of a street
 ay by overhead electric wires, and the company owning the
 ay is specifically named in the ordinance, but the company
 which the railway is leased for a term of years is not mentioned,
 consent of the city to the use of electricity by the lessee com-
 in the operation of the road, is sufficiently declared.⁸⁹

traction company chartered since the Constitution cannot, of
 own authority, make any change in motor power which would
 use the servitude in the street, without municipal consent, but
 nt may be by ratification, as well as by previous permission,
 may be waived by acquiescence without objection for a long

where a street railway company has a right to maintain a trol-
 ne, it has the right, as a matter of course, to repair the same
 time to time, and to use all necessary and ordinary appliances
 ng so.⁹¹

street railway or traction company, chartered since the Con-
 on of 1874, cannot, of its own authority make any change of
 power which will increase the servitude upon the street
 ut municipal consent. Whether a company chartered in 1866
 ecial act, without mention of motor power, can do so, after
 by virtue of implied but unused powers, doubted. Where
 a company, chartered in 1866, changed its motive power to
 city in 1888, without municipal consent, and ran its road
 trolley system until 1893, without municipal dissent or chal-
 held (a) that whether municipal consent was necessary, or
 must be presumed, in an action by a private citizen against
 company; (b) that the trolley road and its necessary ap-
 es cannot be held to be a nuisance *per se*.⁹²

Character of Rails Used.

city may regulate, by reasonable ordinance, the manner in

Haines v. Twenty-second St. & Alleg. Ave. Pass. Ry. Co., 1 D. R.,
 92).

Reeves v. Phila. Traction Co., 152 Pa., 153 (1893); overruling
 v. Same, 11 Pa. C. C., 648 (1892).

Potter v. Scranton Traction Co., 38 W. N. C., 453 (1896).

Potter v. Scranton Traction Co., 176 Pa., 271 (1896).

Potter v. Scranton Traction Co., 176 Pa., 271 (1896).

which a passenger railway company, empowered by its charter to occupy the streets thereof, shall lay its tracks in the public streets, though the charter of the company is silent upon the subject, and an ordinance prohibiting the use of T rails, providing that rails to be used shall be the usual street rails, laid conformably to the usual grades, etc., and that street railway companies must submit to the city councils plan of streets to be occupied, the character of the ordinance, etc., is a reasonable and valid ordinance.⁹³

A street railway company, chartered by special act, which is silent as to the style of rail to be used for its tracks, is not constrained thereby to the kind of rail in use when the charter was granted, but, after adopting the flat rail, then the only one used for street tracks, and continuing to use the same for twenty years, may substitute a T rail, so laid as not to create a greater obstruction to the use of the street nor increase the cost to the city of keeping it in repair.⁹⁴

A railway company, authorized to use steam and carry passengers, may lay T rails, in common use for such railroads, though it may be not expressly authorized and obstruct public travel more than those used by horse railroads.⁹⁵

1604. Extensions and Branches.*

A charter right to construct branches confers no power to select a definite location, without limit in duration of time, but only a right to select and occupy streets with branches within a reasonable time. After twenty-eight years the right to construct branches was held to be gone.⁹⁷

Before the amendment to Sec. 2 of the Act of June 7, 1895, P. L., 518, by Sec. 2 of the Act of May 3, 1905, P. L., 331, the Secretary of the Commonwealth had no option as to filing a certificate of amplification of an extension of the route of a street railway company, so long as the same named the streets and highway through which it desired to operate. After thirty days from such

(93) *Harrisburg City Pass. Ry. Co. v. Harrisburg*, 7 Pa. C. 188 (1884).

(94) *Easton, S. E. & W. E. Pass. Ry. Co. v. City of Easton*, 105 Pa. 505 (1890).

(95) *Millvale Borough v. Evergreen Railway Co.*, 131 Pa. 1 (1880).

(96) See Sec. 1497.

(97) *Junction Pass. Ry. Co. v. Williamsport Pass. Ry. Co.*, 116 Pa. 116 (1893).

right to construct the road vested, but such right depended on the consent of the local authorities.⁹⁸

Under said Sec. 2 of the Act of June 7, 1901, a street railway company, having been vested with an exclusive franchise to operate upon the route covered by its extension as soon as it had resolved upon an extension, recorded the same and filed an exemplification of the same in the office of the Secretary of the Commonwealth. The provision in said section merely postpones the right to construct, and does not the vesting of the franchise for thirty days. Hence if a corporation were chartered within said thirty days to occupy the route its charter would be invalid and subject to forfeiture proceedings in quo warranto.⁹⁹

The plaintiff, claiming the right under its charter granted prior to the Constitution of 1874 to extend its tracks and cross a bridge to connect with the tracks of another railway, and that councils of the city had unreasonably delayed approval of the manner of such extension, began the work of such extension, and being interfered with by the city officials, filed a bill and obtained a preliminary injunction against such interference upon filing a bond to indemnify the city against charges which it might be compelled to pay on account of plaintiff's occupancy of the bridge. On appeal the decree confirmed.¹⁰⁰

When the right of a railway company to build an extension distinct from its charter route is denied, it is bound to show affirmatively that it has not abandoned any of the extensions necessary to connect it with its charter route. A street railway company, having a charter route and legally adopted extensions may determine the construction at any point most convenient to itself. But when an extension is not the natural and usual way, and when challenged the company must show affirmatively its intention to complete the whole, and that its work on the extension is bona fide beginning of the entire operation. Municipal corporations cannot create or enlarge corporate franchises, and where a street railway company has a trunk franchise and branch fran-

Easton Transit Co., 13 Pa. C. C., 518 (1893); *West Chester St. Ry. Co. v. Griest*, 27 Pa. C. C., 427 (1903); *West Chester Ry. Co. v. Rock*, 25 Pa. C. C., 558 (1901); *Butler St. Ry. Charters*, 12 D. C. (1903).

Com. v. Uwchlan St. Ry. Co., 203 Pa., 608 (1902).

Harrisburg City Pass. Ry. Co. v. City of Harrisburg, 149 Pa., 465

chises, if the trunk has no sufficient legal existence, its branches must also fail, and the municipality's consent to their construction will not avail the company.¹

The act of incorporation of a passenger railway company authorized it to lay its tracks on a number of streets designated in the act. A supplement thereto was entitled "A supplement to, etc., authorizing the company to declare dividends quarterly and to lay additional tracks of railway." Held, that under the constitutional provision prohibiting laws "containing more than one subject," said act did not authorize the company to extend its tracks on streets not authorized by the original act. The apparent meaning of the gauge of the title is, to authorize additional tracks to be laid on the original route.²

A street passenger railway company incorporated in 1861 had authority to occupy certain streets, without the consent of the councils, had, prior to 1874, constructed and operated its road on a few of said streets. In 1877, being about to extend its tracks on unoccupied streets, the city filed a bill for an injunction to restrain the company from doing so, until the consent of the councils had not been obtained. Held, that the unrestricted right of the company to lay its tracks in the streets authorized by its charter was not repealed by Sec. 9, Art. III of the Constitution of 1874, and Sec. 16, Act of May 23, 1874, P. L., 111, providing that no street passenger railways shall be constructed within the limits of any city, borough or town without the consent of local authorities.³

Power given in a charter, by special act, to a Philadelphia street passenger railway company, to construct "such branches as may be necessary to connect them with any other railway or road existing within the said city" is to be confined in its operations to the existing ways in existence at the time. An ordinance of city council cannot extend the chartered powers of a corporation.⁴

(1) *Hannum v. Media, Middletown A. & C. Elec. Ry. Co.*, 200 Pa., 1 (1901).

(2) *Union Pass. Railway Company's Appeal*, 81* Pa., 91 (1872).

(3) *Williamsport Pass. Ry. Co. v. Williamsport*, 120 Pa., 1 (1881), reversing *Williamsport v. Williamsport Pass. Ry. Co.*, 3 Pa. C. C., 39 (1880). See *Harrisburg City Pass. Ry. Co. v. Harrisburg*, 7 Pa. C. C., 593 (1880).

(4) *People's Pass. Ry. Co. of Phila. v. Marshall St. Pass. Ry. Co.*, 38 Pa., 361 (1890), citing *North Branch Pass. Ry. Co. v. City Pass. Ry. Co.*, 38 Pa., 361.

the Act of November 22, 1873, authorizing the Union Passenger Railway Company to extend its tracks on certain streets named "and on such other street or streets south of Christian street, north of Twentieth street, north of Columbia avenue, and east of Third street, as the councils of the city of Philadelphia may from time to time permit or authorize," gives the said company the right, subject to the consent of councils, to lay and operate tracks on any street or streets south of Christian street, north of Columbia avenue, west of Twentieth street and east of Third street.⁵

The Governor will not issue letters patent to a street railway company under the Act of May 14, 1889, P. L., 211, as amended by the Act of June 7, 1901, P. L., 514, in a case where, after the filing of the articles of association, but before he has acted upon the application, either to approve or disapprove an extension is filed by another company covering the same route indicated in such articles of association.⁶

A street railway company, having the right under its original charter to construct a railway two miles long over the streets of a borough, filed an application for permission to extend its road through five miles of intervening country to another borough and to cross seven highways therein. Held, that this would constitute in no sense an extension or branch, but would in effect amount to the creation of a new corporation, for which application should be made after advertisement as required by law. Application refused.⁷

An application for an extension will be refused if the bridges proposed to be crossed by the extension are not mentioned, as required by the Act of May 3, 1905, and the application is not accompanied by a certified copy of a resolution of the board of directors.

Com. v. Union Pass. Ry. Co., et al., 163 Pa., 22 (1894) ; 35 W. N. C., 100.

Rock Glen St. Ry. Co., Op. Sec'y Com., 10 D. R., 592 (1901) ; *Butler St. Ry. Companies*, 28 Pa. C. C., 135 (1903). Since the passage of the Act of May 3, 1905, amending Sec. 2, of the Act of June 7, 1901, requiring applications to be passed upon by the Governor and approved or disapproved by him, no right to the extension vests until the Governor has approved the application. Hence the mere filing of a proposed extension in the office of the Secretary of the Commonwealth would not necessarily prevent the filing of a charter for the same route to another company, the application of which was pending at such time. See Sec. 1497.

Royersford St. Ry. Co.'s Extension, Op. Gov., 9 Dau. Co. Rep., 197.

rectors of another railway company a portion of the track which are to be used in the operation of such extension, signifies its consent to such use.⁸

1605. Side-tracks—Switches—Turn-outs, Etc.

The finding of fact that a switch 360 instead of 1000 feet as contracted for by a street railway company, is all that is necessary and properly within the meaning of "necessary turn-outs," used in the permission granted by abutting property owners, will not be reversed by the Supreme Court, where the finding is in accordance with the weight of evidence.⁹

A company which has the consent of the road commissioners to lay a single track, cannot construct a double track under the authority of building switches.¹⁰

Where, however, a street railway company is authorized to construct "necessary turnouts," its power is not exhausted when a railway and turnouts are built, and is not affected by an injunction on the part of the road commissioners and landowners to withhold their consent as to unconstructed switches and turnouts.¹¹

The law attaches no peculiar meaning to the words "turn-out track" and "turn-outs." A turn-out in a railway is a short branch of track having connection by means of switches with the main track. A track five hundred feet long in a borough paved and operated with the original track of a street railway company in connection with a two-track system, so as to make one continuous double-track line, cannot be considered a turn-out.¹²

Where an abutting owner consented to the location of a street railway on a public road, and the railway was constructed, it was enjoined from unduly extending a switch in front of the owner's property, the testamentary trustee of such owner removed the switch thirteen years after the giving of consent, and nine years after the township instituting the injunction proceedings had acquired the use of the extended switch, maintain a bill in equity to compel the railway company to remove the switch.¹³

(8) *Royersford St. Ry. Co.'s Extension*, Op. Gov., 9 Dau. Co. (1906).

(9) *Willis et al. v. Erie City Pass. Ry. Co.*, 188 Pa., 71 (1898).

(10) *Willis et al. v. Erie City Pass. Ry. Co.*, 188 Pa., 71 (1898).

(11) *Willis et al. v. Erie City Pass. Ry. Co.*, 188 Pa., 71 (1898).

(12) *Bridgewater Borough v. Beaver Valley Traction Co.*, 214 Pa. (1906).

(13) *Taylor v. Erie City Pass. Ry. Co.*, 212 Pa., 487 (1905).

Failure to Describe a Circuit.

A failure to describe a "circuit," under the Act of May 14, 1882, in specifying the route of a street railway company can be an advantage of only by the Commonwealth, and the Supreme Court will not render, in a case to which the State is not a party, a judgment which would in effect revoke the charter.¹⁴

In a proceeding in equity to restrain interference with the construction of a street railway, however, it was held that where a street railway locates a portion of its route upon a street already occupied by another street railway in constant daily use, over the portion of which the first named company has no right to run, such company has not a continuous route and cannot construct any extension of its chartered route.¹⁵

Removing One of Two Tracks or Double Tracking.

A street railway company which has received permission from a borough to lay two tracks may, in the absence of any provision to the contrary in the ordinance giving consent, take up one track and remove it entirely, but may not change the location of the other track without the consent of the borough.¹⁶

A street railway company laid down double tracks on a street which it had previously used the same for seven years, when the double track was removed and a single one laid, which sufficed for the business of the street for the next ten years, at the expiration of which time the business again required a double track, which the company was compelled to lay, when a bill was filed to restrain it from so doing, on the ground of forfeiture of right through non-user. Held, that there was no ground for forfeiture.¹⁷

A street railway company, incorporated under the provisions of a special act conferring the power to construct "a railway with one or more tracks," does not exhaust its power by the construc-

) Junction Pass. Ry. Co. v. Williamsport Pass. Ry. Co., 154 Pa., 116 (1891); Du Bois Traction Pass. Ry. Co. v. Buffalo, Rochester & Pgh. Ry. Co., 10 Pa. C. C., 401 (1891).

) Altoona Belt Line St. Ry. Co. v. City Pass. Ry. Co., 209 Pa., 280 (1891).

) Shamokin Borough v. Shamokin & Mt. Carmel Elec. St. Ry. Co., 166 Pa., 166 (1900).

) Hestonville, M. & F. Pass. R. R. Co. v. Phila., 89 Pa., 210 (1879).

tion of a single track railway, but it may subsequently construct a double track railway.^{17*}

1608. Status of Street Railway Companies to Enjoin Other Companies.

A street railway company which has filed an extension of its tracks over streets to which municipal consent has been refused has no standing under the Act of May 14, 1889, to contest the right of another company subsequently filing an extension over the same streets, and having obtained municipal consent to construct its road over those streets.¹⁸

Under the Act of June 19, 1871, which authorizes courts in equity to restrain by injunction injurious acts committed by corporations in the exercise of powers not conferred upon them by their charters, a street railway company has a standing as a plaintiff in a bill in equity to restrain another company from lawfully laying tracks in a street already occupied by the plaintiff.¹⁹

In a suit between street railway companies, involving conflicting claims to occupy the same highway, the local authorities, city, township, borough or turnpike, must be made parties to the suit.²⁰

A street railway company which has failed to obtain municipal consent for the construction of its road has no standing, by reason of its failure to obtain such consent, to apply to the court for an injunction, to question the right of another company subsequently incorporated, to occupy for its railway streets covered by the prior charter. Having no right to occupy such streets, the older company cannot be said to suffer special damage.

Although the Commonwealth may move for the forfeiture of a street railway charter for non-user, one corporation has no warrant for applying to the court to control the will of the Commonwealth by enjoining another company from proceeding under its charter.²²

(17*) *Dunmore Borough v. Scranton Railway Co.*, 34 Pa. Super. Ct., 294 (1907).

(18) *Reading & Temple Railway*, 11 D. R., 30 (1902).

(19) *Germantown Pass. Ry. Co. v. Citizens' Pass. Ry. Co.*, 151 F. 2d, 1892.

(20) *Middletown, etc., Railway Co. v. Middletown Elec. Ry. Co.*, 32 (1894).

(21) *Larimer & Lincoln St. Ry. Co. v. Larimer St. Ry. Co.*, 137 F. 2d, 1890; *Coatesville & Downingtown St. Ry. Co. v. Uwchlan St. Ry. Co.*, 18 Pa. Super. Ct., 524 (1901).

(22) *Chestnut Hill & Norristown Pass. Ry. Co. v. Conshohocken Ry. Co.*, 15 Pa. C. C., 441 (1894).

Leases and Consolidations of Street Railway Companies.²³

Sec. 4 of Art. XVII of the Constitution of 1874, forbidding the consolidation or leasing or control of parallel or competing lines of railroad, canal or other corporations, does not apply to street railway companies.²⁴

The Act of February 17, 1870, P. L., 81, giving to railroad companies the right to lease their property and franchises, applies to street passenger railway companies as well as to steam road companies.²⁵

The said Act of 1870 requires that a railroad company leasing its line shall have continuous connection between its own line and that leased. A traction company having no lines of its own is not leased that of a street railway. Held, that only the State can question the validity of the lease.²⁶

The Acts of 1861, P. L., 419, and 1870, P. L., 31, apply to all railways, but they permit the leasing of franchises only if the roads of the companies so leasing or leased, are connected with other, either directly or by means of intervening lines. If one of the companies is not the owner of a railway, these provisions do not apply. The power of street railway companies to take leases to traction companies is derived by implication from the Traction Company Act of 1887, P. L., 8, which authorizes street railway companies to take leases of street railway companies.²⁷

Where a railway company leases its road to another such company pursuant to law, the lessee is alone liable for all negligence in the operation of the property leased.²⁸

Street railway companies have no corporate power authorizing them to lease advertising space in their cars, but a person who has obtained such space and enjoyed the advantages of his contract is precluded from pleading that the contract is ultra vires.²⁹

The laws authorizing leases by street railway companies are

²³ See Secs. 1491-1493. As to leases of poles, wires or electric current see Sec. 1237.

²⁴ *Shipley v. Continental Ry. Co.*, 13 Phila., 128; *Gyger v. Phila. City Ry. Co.*, 136 Pa., 96 (1890).

²⁵ *Rafferty v. Central Traction Co.*, 147 Pa., 579 (1892).

²⁶ *Rafferty v. Central Traction Co.*, 147 Pa., 579 (1892).

²⁷ *Smith v. Reading City Pass. Ry. Co.*, 13 Pa. C. C., 49 (1893).

²⁸ *Pinkerton v. Penna. Traction Co. et al.*, 193 Pa., 229 (1899).

²⁹ *Pitts. & Birmingham Traction Co. v. Seidel*, 19 Pa. C. C., 463.

comprehensive enough to cover and include all such costs without regard to the motor power used by them. Unanimous consent is not required to a valid lease by a railway company. The votes of a majority of the shares is all that is required.

Where a street railway company licenses a second railway company "or its assigns" to use its track, under an agreement providing that the second company shall pay one-half the cost of construction of the portion of the road used, a company which owns all the stock of the second company, and has leased its tracks for nine hundred and ninety-nine years is an "assign," within the meaning of the agreement, and may use the tracks in its business but only to the extent that the second company might have used them, and may not use it for cars which it hauls in the operation of its leased or consolidated lines other than the said second company, its lessor.³¹

Where a street railway company leases its power house and machinery to an electric light, heat and power company, the lessee covenants to supply the lessor with power to run its cars, to keep the property leased in good repair, and to restore it to good condition at the end of the term, to pay net revenue to the lessor to be applied to the payment of coupons on the lessor's bonds, and to pay taxes on the leased property, and to execute a mortgage to the lessor as security for the faithful performance in compliance with the terms of the lease, such mortgage may be enforced in a court of equity where it appears that the lessee failed to rebuild the power house after it had been destroyed by fire, and to pay certain expenses incident to the proper care of the leased property, and that the lessor paid for it, and that the lessee applied certain of the receipts to betterments and improvements, and failed to pay for them on the leased property.³²

1610. ~~Corporate Acts—Meetings—Increases of Capital, et~~

Street passenger railway companies must increase their stock and indebtedness as provided in Sec. 7, Art. XV of the Constitution of Pennsylvania. Sec. 5 of the Act of May

(30) *O'Neil et al. v. Hestonville, M. & F. Pass. Ry. Co.*, 9 Pa. 492 (1900).

(31) *South Side Pass. Ry. Co. v. Second Ave. Pass. Ry. Co.*, 9 Pa. 492 (1899).

(32) *Gettysburg Elec. Ry. v. Elec. Lt., Ht. & Pr. Co. of Gettysburg, Pa.*, 372 (1901).

212, is unconstitutional to the extent that it provides a different method.³³

Notices of meetings of stockholders of street railway companies governed by Secs. 8 and 9 of the Act of May 14, 1889. A publication of notice in one or more newspapers published in the county at least two weeks previously is sufficient.³⁴

Two reputable citizens resident in the region traversed by the line of a street railway company, have a standing to petition the court for a mandamus to compel the Attorney General to institute proceedings against a street railway company, which has issued bonds contrary to the provisions of Sec. 7, Art. XVI of the Constitution, to enforce the provisions of the Act of May 7, 1887, P. L., 1887, but before that officer will be subject to a writ of mandamus, to compel him to proceed under the Act of 1887, he has a right to show the strength of the case he is asked to present in the name of the Commonwealth, and the parties asking him to proceed must establish a *prima facie* case.³⁵

Acceptance of the Provisions of the Act of May 14, 1889 (P. L., 211).

Section 20 of the Act of May 14, 1889, relating to the acceptance of the act by street railway companies already organized, applies not only to companies formed under the unconstitutional act of 1878 and 1879, but also to companies legally organized under special acts of assembly, the words "under color of" in said act being equivalent to "under authority of," in that connection.³⁶

Mechanics' Liens.

The power house of a street railway company, containing engines and machinery, is not the subject of a mechanics' lien.³⁷

Elevated Railways.³⁸

Section 1 of the Act of June 7, 1901, relating to elevated railroads is con-

) *Shepp v. Norristown Pass. Ry. Co.*, 13 Pa. C. C., 254 (1893).

) *Weckerly v. Fell et al.*, 22 Pa. C. C., 209 (1899).

) *Cheetham et al. v. McCormick*, 178 Pa., 186 (1896).

) *Berks County v. Reading City Pass. Ry. Co.*, etc., 167 Pa., 102 (1900).

) *Oberholtzer v. Norristown Pass. Ry. Co.*, 16 Pa. C. C., 13 (1894);

) *Schuykill Elec. Ry. Co.*, 23 Pa. C. C., 353 (1900).

) See Secs. 1529-1547.

stitutional. It is not special legislation, nor is the provision for compensation of land owners and the filing of bonds, adequate. The common bond filed by a railroad company to protect land owners, where land is condemned, is sufficient to protect the land owner. An elevated railway company, incorporated under the Act of June 7, 1901, but prior to the passage of the Act of June 20, 1901, is not within the restrictions of the latter act, though the company was the only one which was chartered between the dates of the two acts.³⁹

1614. Traction Companies.*

The title of the Act of March 22, 1887, P. L., 9, is sufficient to cover the power conferred by Cl. 8, of Sec. 1, authorizing street power companies "to lease the property and franchises of passenger railways which they may desire to operate, and to operate said railways," and under such clause street railway companies are, by implication, given power to lease such motor companies, whether situated in cities and boroughs or elsewhere.⁴²

Under the first section of the Act of March 22, 1887, P. L., 9, which provides that a street railway company organized under the Act may lay tracks upon any street upon which "a passenger railway now is or may hereafter be constructed," such company may enter upon streets and lay their tracks thereon, though a passenger railway has theretofore been constructed thereon.

When a traction company operates a railway and leases the property and franchises of various railway companies and operates them on its own account, it is exercising the franchise of a street railway company, as it is authorized to do, and it enjoys the privileges granted to and becomes subject to the liabilities imposed by law upon such companies.⁴⁴

(39) *Phila. & Trenton R. Co. v. Neshaminy Elevated R. Co.*, 206 Pa., 504 (1902); 206 Pa., 343 (1903).

(40) See Secs. 1481-1493.

(41) *Pinkerton v. Penna. Traction Co. et al.*, 193 Pa., 229 (1899); *Smith v. Reading Traction Co.*, 2 D. R., 490 (1893).

(42) *Phila. & West Chester Tpk. Co. v. Phila. & Del. County R. Co.*, 5 D. R., 305 (1896).

(43) *Rafferty v. Central Traction Co.*, 147 Pa., 579 (1892).

(44) *Phila. v. Phila. Traction Co.*, 206 Pa., 35 (1903). See *Rafferty v. Central Traction Co.*, 147 Pa., 579; *Reeves v. Phila. Traction Co.*, 153; *Old Colony Trust Co. v. Allentown etc., Rapid Transit Co.*, 1596.

15. Foreign Corporations May Control Street Railway Companies.

Apparently a foreign corporation may acquire a controlling interest in the stock of a domestic street railway, and no one can question its right to do so, save the State of its creation or the Commonwealth of Pennsylvania.⁴⁵

16. Service of Summons on a Street Railway Company.

Although the entire roadbed of a street railway company may be in one county, where also it maintains its principal office for the meeting of its stockholders and the transaction of other business, yet suit in trespass may be maintained in another county as a cause of action arising in the first county, and a good service may be had upon the president at his residence in the second county, where it appears that both the president and the secretary of the company reside in the second county, and that the company maintains in this county an office occupied by the secretary and the company's typewriter, where much of the correspondence is carried on; where the board of directors meet; where the corporate seal is kept for a part of the year, and affixed to corporate documents; where stock certificates are attested and issued; where the company's ledger account is kept, and much of its business, including a part of its banking business, is transacted.⁴⁶

17. Street Railway Companies Liable for Special Injury Caused by the Lawful Operations of Their Works on Their Own Lands.

A street railway company, not having the right of eminent domain, is liable for a special injury to another's property resulting from the lawful operation of its works on its own land.⁴⁷

18. Fares, Etc.^a

Street railway companies may make reasonable regulations upon the subject of fares, and refuse to carry passengers who do not

^a) *White v. Ryan*, 15 Pa. C. C., 170 (1894).

^b) *Jensen v. Phila., Morton & Swarthmore St. Ry. Co.*, 201 Pa., 603 (1901).

^c) *Rogers v. Phila. Traction Co.*, 182 Pa., 473 (1897); Query, whether passage of the Act of June 1, 1907, P. L., 368 (Sec. 1520) conferring the right of eminent domain results in the relief of street railway companies from such liability.

^d) See Sec. 1528.

comply with them. The reasonableness of a tender of more than a five-cent fare in excess of the fare is for the court. A tender of a five-cent fare in payment of a five-cent fare is unreasonable.⁴⁹

Where it is stipulated in a grant to a street railway company of a franchise to construct and operate upon a township road that the company shall not exact a fare in excess of a certain amount, and the company does exact a fare in excess thereof, owners of property abutting on the road, and having no contract as to fare with the company, may not join with the township authorities to pass a bill in equity to restrain the company from collecting excessive fare.⁵⁰

1619. Street Railways Formed Under Special Acts.

Where a railway company incorporated under special act of assembly has the right to construct and operate its road in a township without the consent thereof, the borough has no standing to object that the company exceeded its power in entering into an agreement for the use or lease of its tracks. In such case a writ of prohibition can only be made by the Commonwealth.⁵¹

1620. Miscellaneous.

A street railway company bought steel rails and deposited them along its projected line, but before they were laid, the company was enjoined from proceeding until it obtained municipal consent. In the meantime the company having become insolvent, resold them to the manufacturer from whom they were purchased by a written instrument signed by the officers of the company in pursuance of a resolution of the board of directors. Property was taken of the property resold, and subsequently another owner of the property attached them. Held, that as the company had not operated any part of its road, it might sell the rails.

Before a decree is made in a controversy between railway companies over the right to a highway, the local authorities, city, township or borough must become parties to the suit.

(49) *Muldowney v. Pitts. & Birmingham Traction Co.*, 8 Pa. St. 335 (1898).

(50) *Millcreek Township v. Erie Rapid Transit St. Ry. Co.*, 20 Pa. St. 402 (1907).

(51) *Minersville Borough v. Schuylkill Elec. Ry. Co.*, (No. 2) 402 (1903).

(52) *Johnson Co. v. Miller*, 174 Pa., 605 (1896).

(53) *Middletown, H. & S. St. Ry. Co. v. Middletown Elec. Ry. Co.*, Pa. C. C., 127 (1894).

CHAPTER LXXII.

TELEGRAPH AND TELEPHONE COMPANIES.

- Formation of Telegraph Companies.
- Telephone Companies are Telegraph Companies Within Meaning of the Act of April 29, 1874, and its Supplements.
- Where Business May be Transacted.
- What Charters Shall State.
- Construction of Lines of Telegraph and Telephone Authorized.
- Permission to Erect Poles Municipalities to be First Obtained.
- Operation in Townships.
- Operation in Municipalities—Location of Poles and Licenses.
- Licenses in Cities of the Second Class.
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feiture Auditor General
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1621. Formation of Telegraph Companies.

Corporations may be formed under the provisions of for VI. The construction and maintenance of a telegraph line.

For the purpose of constructing, maintaining and leasing of telegraph for the private use of individuals, firms, corporations, municipal and otherwise, for general business, and for police, fire alarm, messenger business, or for the transaction of business in which electricity over or through wires may be used for any useful purpose.¹

1622. Telephone Companies Are Telegraph Companies Within the Meaning of the Act of April 29, 1874, and Its Amendments.²

1623. Where Business May Be Transacted.

The business of such corporation may be wholly within or partly within and partly without the limits of any city, township or township in this State, or partly in any other State or

1624. What Charter Shall State.

The charter for the incorporation of a company to maintain a telegraph line, shall, in addition to what is hereinbefore stated, also state:

(1) Sec. 1, Act of April 29, 1874, and Sec. 2, thereof, as amended by Sec. 1, of the Act of May 1, 1876, P. L., 90.

(2) *Penna. Teleph. Co. v. Hoover*, 209 Pa., 555 (1904); 24 F. 2d, 96; *Central Penna. Teleph. & Supply Co. v. Wilkesbarre & N. York Co.*, 11 Pa. C. C., 417; *Com. v. Penna. Telephone Co.*, 42 Leg. Int., 57; *Peoples' Teleph. & Teleg. Co. v. Berks & Lehigh Co.*, 199 Pa., 411 (1901); *York Teleph. Co. v. Keesey*, 5 D. R., 36.

(3) Sec. 2, Act May 1, 1876, P. L., 90.

First. In what counties in this State it is proposed to carry on business.

Second. In what other States it is proposed to carry on business.⁴

Statement of purpose:—The construction, maintenance and operation of a line or lines of telephone (or telegraph) from ——— and extending through ———. The said line is to pass through the counties of ——— and ———, all within the State of Pennsylvania.

25. Construction of Lines of Telegraph and Telephone Authorized.

Such corporations shall be authorized, when incorporated as hereinbefore provided to construct lines of telegraph and telephone along, under and upon any of the public roads, streets, lanes or highways, across or under any of the waters within the limits of this State, by the construction of the necessary fixtures, including poles, cables, posts, piers, abutments or subways, subject to the reasonable regulations of the municipalities through which it passes; but the same shall not be so constructed as to incommode the public use of said roads, streets, lanes or highways, or intentionally interrupt the navigation of said waters and this act shall be so construed as to authorize the construction of a bridge across any of the waters of this State.⁵

26. Permission to Erect Poles in Municipalities to Be First Obtained.

Before the exercise of any of the powers given under this application shall be first made to the municipal authorities of the city, town or borough in which it is proposed to exercise said powers, for permission to erect poles, or run wires on the same, over or under any of the streets, lanes or alleys of said city, town or borough, which permission shall be given by ordinance, and may impose such conditions and regulations as the municipal authorities may deem necessary.⁶

⁴) Sec. 33, of the Act of April 29, 1874, P. L., 92, as amended by Sec. 1, Act of May 1, 1876, P. L., 90.

⁵) Clause 1, Sec. 33, of the Act of April 29, 1874, P. L., 91, as amended by the Act of April 22, 1905, P. L., 294.

⁶) Act of June 25, 1885, P. L., 164, amending Sec. 4, of the Act of May 1, 1876, P. L., 90. This act is constitutional. Keystone State Teleph. &

1627. Operation in Townships.

Commissioners of townships of the first class may impose by ordinance a reasonable license tax on telegraph and telephone companies for each pole in the township.⁷

Supervisors of a township of the second class will be restrained by injunction from interfering with the construction of telegraph subway where they have refused to give their consent to such construction on reasonable terms.⁸

1628. Operation in Municipalities*—Location of Poles and

Before telegraph and telephone companies may enter upon the streets of municipalities, under the provisions of the Act of May 25, 1885, P. L., 164, amending Sec. 4 of the Act of May 1, 1884, P. L., 90, they must secure permission from the authorities of the municipality to erect poles and wires on the same. Upon granting permission, the authorities may impose such restrictions, conditions and regulations as they may deem necessary. An ordinance, granting permission to a telephone company to erect its poles, etc., with the conditions and regulations attached, constitutes a contract between the borough and the company which neither may rescind nor alter. Under the provisions of Sec. 5, of the Act of April 17, 1874, P. L., 33, amending Sec. 23 of the Act of April 29, 1874, a telegraph company may assign its franchises to another company. In 1891, when a borough attaches to an ordinance granting the right to erect and maintain poles in its streets the conditions that the company should file a bond for faithful fulfilment of conditions, that the location of the poles should be under the supervision of the street committee, Held, that the acceptance, approval and ratification by the borough officers, without objection, of a bond so limited the liability of the surety to one year, was a waiver of all objections to the bond; that the company could locate its poles only where the committee directed, and that the rights of the

Telegraph Co. v. Ridley Park Borough, 28 Pa. Super. Ct., 635 (1905), and *Bradford City v. Penna. & N. Y. Telegraph & Telephone Co.*, 26 Pa. Ct. (1902). The latter case was affirmed by the Supreme Court, 206 Pa. Ct., 306 (1904).

(7) *Lower Merion Township v. Postal Telegraph Cable Co.*, 25 Pa. Ct., 306 (1904).

(8) *American Telegraph & Telephone Co. v. Reed*, 31 Pa. C. C., 657 (1904).

*As to pole and wire licenses, see Sec. 763.

y, acquired by such ordinance, were assignable to another company.⁹

An ordinance providing, that telegraph companies may apply to councils to have their poles located, whereupon councils may designate the location of each pole or authorize the street committee or city engineer to locate the same, is valid and binding upon such companies, and where an ordinance requires that poles "shall be erected and erected under the supervision and approval of the city engineer," a verbal approval by said engineer of a general plan showing where a company intends to erect its poles, without more, is not sufficient.¹⁰

Where, however, a borough ordinance imposes a license fee of one dollar per mile upon all poles used for telegraph or telephone companies within a borough, such ordinance is unconstitutional and invalid because it discriminates against telephone and telegraph companies by taxing their poles, and exempting the poles of electric light and railway companies.¹¹

Where a telephone company is authorized by a city to construct and maintain its lines over and through the city streets, upon the condition that it shall comply with existing ordinances or ordinances "regulating or in any way controlling telegraph or telephone companies in the use of the streets for telegraph or telephone purposes," the company may elect what streets it shall occupy, and after it has accepted the condition and constructed its lines, the city may not impose further conditions, but may only regulate the use of the streets. A grant of the right to run and maintain wires "over and through a street" does not include permission to lay wires under, below or beneath such streets.¹²

A municipality may make its grant to a telegraph and telephone company of a franchise to construct and operate its lines on the streets, conditional upon the completion of such lines within a rea-

Lewistown Borough v. The Juniata & Susquehanna Telephone Co., 185 Pa., 562 (1901); *New Castle City v. Central Dist. & Tel. Co.*, 207 Pa., 371 (1903).

New Castle City v. Central Dist. & P. Tel. Co., 207 Pa., 371 (1903). *Athens Borough v. N. Y. & Penna. Teleg. & Teleph. Co.*, 9 D. R., 1900).

Com. v. Warwick et al., 185 Pa., 623 (1898). In *Allegheny Light & Power Co. v. City of Pittsburgh*, 216 Pa., 564 (1907), however, it was held that an electric company having the right to use the streets of a municipality might install conduits under the sidewalks.

sonable time, and a time limit of five months in such case is unreasonable. Such condition is a condition precedent to the granting of the franchise, and when it is not performed, the municipality may treat the poles and wires already erected as a nuisance and remove them after notice, without a breach of the peace, and without unnecessary injury to the company's other property. In a case the forfeiture of a bond for \$200.00, required by the franchise granting the franchise, conditioned on the completion of the company's lines within the time limit mentioned is not the municipalities' only remedy.¹³

The erection of telephone poles in the streets of municipalities by duly incorporated corporations, with municipal consent and conformity with municipal regulations, does not of itself constitute an additional burden for which the owner may demand compensation, but appreciable interference with light, air, and drainage constitutes an additional burden for which the property owner is entitled to be compensated.¹⁴

A bill in equity filed by a municipality to compel a telephone company to remove poles and wires from the streets may be dismissed where it appears that the defendant and its predecessors without protest from the municipality, have occupied the streets for more than twenty-one years, and invested large sums in the erection of poles and wires thereon; numerous resolutions have been passed consenting to the erection of poles, etc., and the municipality had received a valuable consideration for the franchises granted by it to the company in the use of the poles and wires for carrying fire alarm wires, etc., etc.¹⁵

When a municipality and a telephone company enter into a contract whereby each receives valuable rights and privileges, and such contract is in force, neither party having violated the provisions, the municipality may not, the contract not providing to the contrary, order the company to remove its poles and wires underground, under penalty of the city itself doing the work and charging the expense to the company, and a c

(13) *Keystone State Teleph. & Teleg. Co. v. Ridley Park Borough*, 10 Pa. Super. Ct., 635 (1905).

(14) *Shinzel v. Bell Teleph. Co.*, 31 Pa. Super. Ct., 221 (1906).

(15) *Bradford v. N. Y. & Penna. Teleph. & Teleg. Co.*, 206 Pa. 101 (1903).

city will in such case enjoin the removal of the poles and
es. 15*

9. Licenses in Cities of the Third Class.

city of the third class may, under the provisions of Cl. 4,
3, Art. 5, of the Act of May 23, 1889, P. L., 277, impose by
nance an annual license tax upon telephone companies, though
be engaged in both local and inter-state business, if there
nothing in said ordinance to indicate an intent to tax inter-
e commerce business.¹⁶

10. Invasion of Private Rights in Municipalities.

court is bound to interfere on a proper occasion for the pro-
on of a private right from injury from a telephone pole,
gh the city has authorized its erection. Where the pole is
ted according to law and but slight inconvenience will result,
rection will not be enjoined, but the erection of a pole in
t of a window or door will be restrained, and where the de-
ant's action has been harsh and arbitrary the costs will be
sed on him.¹⁷

bill in equity against a telephone company is totally defec-
in substance when it merely alleges that the defendant is
t to erect a telephone pole on the property of the plaintiff,
that the erection of said pole will be a great and irreparable
age to the property of the said plaintiff without any aver-
that the defendant was without authority to erect such pole,
at such erection would be unlawful or that there were pe-
r circumstances that rendered a remedy at law inadequate.¹⁸

11. Power of Eminent Domain Limited.

all cases where the parties cannot agree to the amount of
ages claimed, or by reason of the absence or legal incapacity

*) Consolidated Telephone Companies of Pennsylvania v. Wilkes-
34 Pa. C. C., 177 (1907).

) Johnstown v. Central Dist. & P. Tel. Co., 23 Pa. Super. Ct., 381
)

) Russ v. Penna. Tel. Co., 15 Pa. C. C., 226 (1894); Bartholeumew v.
a. Teleph. Co., 29 Pa. C. C., 390 (1903). See Shinzel v. Bell Teleph.
I Pa. Super. Ct., 221 (1906).

) Cooke v. Central Dist. & Pr. Teleg. Co., 21 Pa. Super. Ct., 43
)

of the owner or owners no such agreement can be made. The right to enter upon lands or premises for the purpose mentioned in this section, the company shall tender a bond, or have proceedings filed in the manner provided in the forty-first section of this act, and proceedings shall be had as therein set forth.¹⁹

Notwithstanding the foregoing provision of the law, telegraph and telephone companies do not have the right of eminent domain over the private lands of individual owners. The point in question relates to the additional servitude imposed upon property in roads, highways, etc., remaining in the hands of property owners by the construction of the lines of such companies.²⁰

The construction of a telephone line along the side of a turnpike, the middle or side of which is occupied by a passenger carway, imposes an additional servitude upon the turnpike and the companies, and will be enjoined until proper compensation is paid or secured.^{20*}

1632. May Connect With Other Lines.

The said telegraphic corporation shall have the right to connect its lines of telegraph with any other line operating within this State; and it shall be the duty of any corporation or person owning any other telegraph line doing business within this State to permit such connection, and to receive dispatches from and for other telegraph lines and corporations, and from and for individuals, and on payment of their usual charges to individuals transmitting dispatches, as established by the rates and conditions of such telegraph line, to transmit the same with promptness and good faith, under penalty of one hundred dollars for neglect or refusal so to do, to be sued for as debts of like amount are by law recoverable, and to be recovered with costs of suit in the name and for the benefit of the person or persons sending the dispatch desiring to send such dispatch.²¹

(19) Clause 2, Sec. 33, Act April 29, 1874, P. L., 92. As to amount of damages, see *Shuster v. Central Dist. & Pr. Teleg. Co.*, 34 Pa. Ct., 513 (1907).

(20) *Penna. Teleph. Co. v. Hoover*, 209 Pa., 555 (1904); 24 Pa. Ct., 96, reversing 27 Pa. C. C., 61 (1902); 5 Dauph. Co. Rep., 31 R., 708; *Pfouts v. Penna. Teleph. Co.*, 24 Pa. Super. Ct., 105 (1900).

(20*) *Lancaster & Susq. Tpk. Rd. Co. v. Columbia Telephone Co.*, D. R., 322 (1900).

(21) Clause 3, Sec. 33, Act April 29, 1874, P. L., 92.

Competing Lines Not to Consolidate.

no such telegraph company shall be consolidated with or merged in any other company owning a competing line of telegraph, nor shall the stock or bonds of any such telegraph company to an amount sufficient to control the same, be held or owned by any company owning a competing line of telegraph, nor shall any company owning a competing line acquire, by purchase or otherwise, any other competing line of telegraph.²²

Extra Charges Not to Be Made for Delivery of Dispatches.

no charge by all telegraph companies organized under this act, and those accepting the provisions thereof, for the transmission of any telegraphic dispatch, shall include the charge for delivery thereof, and no extra or additional charge shall be made for such delivery.²³

Companies May Not Discriminate Between Customers of the Same Class.

telegraph and telephone companies are subject to the rules governing common carriers. They are not bound to extend their service beyond such reasonable limits as they prescribe for themselves, but they cannot discriminate between individuals of classes whom they undertake to serve. They may confine themselves to the carriage of personal messages for individuals, and exclude business messages of telegraph companies and others forwarding messages for others, but if they grant privileges to one telegraph company they must extend the same right to all.²⁴

Erecting Poles on Highways.

the erecting lines of poles in a certain place on a highway with the consent, express or implied, of the road authorities does not give any company erecting the same a vested right perpetually to maintain poles in that particular location. If changed conditions make it desirable for the public good that the poles should be

Clause 4, Sec. 33, Act April 29, 1874, P. L., 93. See Constitutional Convention, Sec. 33. See, also, Secs. 1641, 1644, 1655.

Clause 5, Sec. 33, Act April 29, 1874, P. L., 93.

Del. & Atl. Telegr. & Teleph. Co. v. Delaware, etc., U. S. Cir. Ct. W. N. C., 365 (1892). See Bell Telephone Co. of Phila. v. Com.

W. N. C., 505 (1886).

moved to a different part of the highway, the road commission may compel such removal.²⁵

A turnpike road when used by the public is a public use, and, under the Act of April 29, 1874, a telephone company may locate and construct its line upon said road, provided the location and construction does not incommode the public use of the road.²⁶

Where a telephone company obtains the consent of a landowner to erect its poles in a certain way, upon entering into a security agreement, and fails to enter security, equity will restrain it from erecting its poles in a manner not in conformity with the agreement until security is entered.²⁷

Telephone lines may not be constructed along railroad tracks, even with the consent of the railroad company owner, without the consent of the persons owning the fee in the land covered by such rights.²⁸

1637. Interference of Operations of Telephone Companies with Street Railway Companies.

Where an injunction was asked for to prohibit a street railway company from operating upon streets occupied by a telephone company's lines, it was held that if the telephone company could avoid the dangers to its property by raising its wires, the street railway company could not obviate them by reason of its position in the construction of its road, the duty to change the company's line rested with the telephone company. If the danger was caused through the original faulty construction of the telephone line, the telephone company would not be entitled to be compensated for the cost in making the change; otherwise, undecided as to whether it would pay cost. The measure of damages would be such cost as it is commercially impossible to operate both a telephone

(25) *Amer. Teleg. & Teleph. Co. v. Millcreek Township*, 190 Pa. 411 (1900); *Amer. Teleg. & Teleph. Co. v. Harborcreek Township*, 190 Pa. 411 (1900); *Super. Ct.*, 437 (1903).

(26) *People's Teleph. & Teleg. Co. v. Berks & Dau. Tpk. Rd. Co.*, 190 Pa. 411 (1901). But the construction of such line imposes a burden on the real estate occupied by the road. See *Lancaster Elec. Lt. Co. v. Hart et al.*, 1 D. R., 571 (1892).

(27) *Limekiln Tpk. Rd. Co. v. Keystone State Teleg. & Teleph. Co.*, 13 D. R., 465 (1903).

(28) *Pittcock v. Central District & Printing Teleg. Co.*, 31 Pa. Ct., 589 (1906).

ric street railway on the same street, doubted, whether the occupation of the street by the telephone company would give superior right to the use of the street.²⁹

Lease of Lines.³⁰

Authority given by the charter of a telegraph company to its lines, fixtures and apparatus, does not authorize a lease of franchises, nor empower its lessee to build new lines upon routes.³¹

Amendment of Charters of Telephone Companies.

An opinion of the Attorney General³² holds that a telephone company may not extend the territory throughout which it may operate by an amendment to its charter under the Act of June 13,

Foreign Telephone Companies May Construct and Operate in Pennsylvania.

A foreign telephone company, duly registered under the Act of April 22, 1874, may erect poles and string wires upon highways in Pennsylvania.³³

Telephone Companies May Buy and Own the Stock of Other Such Companies and the Franchises and Property Thereof, Such Companies Not Owning or Operating Competing Lines.

It shall be lawful for any telephone corporation to buy and own the capital stock of any other like corporation, and to acquire, in the manner hereinafter provided, and thereafter be possessed of, own, hold, exercise and enjoy all the franchises, real estate property, rights and credits then possessed, owned, held

(1) *Central Telephone & Supply Co. v. Wilkesbarre & West Side Telephone Company*, 11 Pa. C. C., 417 (1892).

(2) See Sec. 1237.

(3) *Phila. v. W. U. Teleg. Co.*, 2 W. N. C., 455 (1874).

(4) The Act of June 13, 1883, known as the "Corporation Amendment Act," construed. Op. Atty. Gen. Attorney Gen's Rep., 1895-6, p. 393; 2 Pa. C. C., 129.

(5) *Lindsay v. Keystone State Telephone & T. Co.*, 9 Del. Co., 295 (1874); 18 York, 62. Just where such foreign companies acquire the right to impose an additional servitude on the lands of abutting property owners by highways is not apparent, however. See Sec. 1631.

or exercised by said last mentioned vendor corporation, purpose of connecting said telephone lines into a continuous phone system: *Provided*, That the provisions of this act apply to telephone companies owning or operating, or in controlling, competing lines.³⁴

1642. Method of Acquisition.

Such acquisition shall be effected in the manner and conditions hereinafter stated, to-wit:

First. The corporations shall, pursuant to resolutions adopted by the directors of each, make and execute, under respective corporate seals duly attested, an agreement providing for such terms, stipulations and conditions thereof, and particularly showing the number of outstanding shares of capital of the vendor corporation, the amount fixed as the price per share thereof, and the mode by which the respective corporations shall receive payment for the same, and with a map of the phone line to be acquired thereunder annexed and made a part thereof.

Second. Said agreement shall be submitted for approval to the stockholders of each corporation at their annual meetings, either annual or special, duly convened after giving more than sixty days' notice given by advertisement in at least one newspaper of general circulation, published in each county in which said corporations have their principal offices; and the agreement shall be approved by a majority of the stockholders of each corporation present at such meeting, then that fact shall be certified by the secretary of each corporation, under its corporate seal, and a copy of the agreement, with said certificates of approval, shall be filed in the office of the Secretary of the Commonwealth, and immediately upon the filing thereof all the corporate franchises and privileges, and all the corporate property, real, personal and mixed, rights and credits, owned, possessed, used, or otherwise exercised by the vendor corporation shall be transferred (subject, however, to full payment, in the manner prescribed

(34) Sec. 1, Act of June 14, 1901, P. L., 566. If a telephone company be a telegraph company, within the meaning of the Constitution (see Sec. 37), as it has been held that it is within the meaning of the Act of 1874 (see Sec. 1622), this act would be unconstitutional, inasmuch as it permits companies operating competing lines to purchase the franchises and franchises of each other, through the purchase of their stock.

agreement, of the stipulated price or value of the whole capital stock of said vendor corporation), become and be vested in the acquiring corporation, subject to all the debts, liabilities and claims of said vendor corporation, and shall thereafter be possessed, held, used, exercised and enjoyed by said acquiring corporation as fully, completely and absolutely in all respects as they had been theretofore owned, held, exercised and enjoyed by said vendor corporation; and said acquiring corporation may, with respect to the property so acquired, have, exercise and enjoy all the rights, powers, privileges and franchises which it has and may exercise respecting its other lines and property. Upon the filing in the office of the Secretary of the Commonwealth of said copy of agreement and attached certificates, as may be required, the capital stock of said vendor corporation shall be wholly extinguished, by payment in the mode prescribed in the agreement of the stipulated price or value thereof, and all the certificates representative thereof shall be delivered to the acquiring corporation for immediate cancellation; and all the corporate assets, franchises, privileges and property of every kind, acquired under said agreement, shall thereafter be represented by the capital stock of the acquiring corporation, and thereupon the corporate existence of the said vendor corporation shall terminate.³⁵

Copy of Agreement to Be Evidence—Appointment of Appraisers—Award.

A copy of said agreement, with said certificates attached, shall be deposited in the office of the Secretary of the Commonwealth, shall be evidence of the lawful holding of the meetings of stockholders of said corporation, and of the due approval of the said agreement required by this act, as well as the precedent action of the directors of each approving thereof. If any stockholder or stockholders of the corporation whose franchises, corporate property, assets and creditors are acquired under said agreement, and who do not vote in favor of said agreement, shall be dissatisfied with said acquisition and the terms and conditions thereof contained in said agreement, then it shall and may be lawful for any such stockholder or stockholders, within thirty days after the filing of said agreement in the office of the Secretary of the Commonwealth, to apply by petition to the Court of Common Pleas

³⁵ Sec. 2, Act June 14, 1901, P. L., 566.

of the county in which the chief office of the said last mentioned corporation may be situated, to appoint three disinterested persons to estimate and appraise the damage, if any, which the stockholder or stockholders shall suffer or sustain by reason of the purchase and acquisition provided for by said agreement, whose award or that of a majority of them, when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders in the said company at the market value thereof at the time of the purchase and acquisition; and the said company may, at its election, either pay to the said holder the amount of damages so found or the value of the stock so ascertained, and upon payment of the value of the stock, as aforesaid, the same shall be transferred to and held by the said acquiring company.³⁶

1644. Issue of Bonds.

In connection with and upon consummation of such acquisition, as aforesaid, the acquiring company may issue its own authorized, capital stock, or its own bonds, either or both, for less than the par or face value thereof, not exceeding the value authorized by its charter, for the purpose of paying and extinguishing the outstanding capital stock and bonded indebtedness, or either, of the corporation whose rights, property and franchises are so acquired.³⁷

1645. Reports to Secretary of Internal Affairs.

Telegraph and telephone companies are required to make annual reports to the Secretary of Internal Affairs for statistical purposes.³⁸

1646. Lapse of Time Not to Raise a Presumption of a Right to Attach Wires or Cables.

Whenever any wire or cable used for any telegraph, telephone, electric light, or other wire, or cable for electric purposes, shall be attached to, or does or shall extend upon, or over any building or land, no lapse of time whatsoever shall raise a

(36) Sec. 3, Act June 14, 1901, P. L., 566.

(37) Sec. 4, Act June 14, 1901, P. L., 566.

(38) See Sec. 1844.

ption, or justify a prescription of any perpetual right to such attachment or extension.³⁹

7. Recovery of Damages to Trees Along Highways by Telegraph, Telephone and Electric Light Companies.

From and after the passage of this act, it shall be lawful, whenever any telegraph, telephone or electric light company shall have erected its poles and lines along any turnpike, public road, street, lane, alley or highway in this Commonwealth, for the owner or owners of land adjoining said turnpike or public road, to claim to be damaged by the erection or maintenance of lines by reason of the cutting of trees, whether planted in the turnpike, public road, street, lane, alley or highway, or on land enclosed on unenclosed land adjoining the same, to petition the Court of Common Pleas of the county in which said damage shall be alleged to have been committed, whereupon the said court shall appoint three impartial men, citizens of the county in which said damages shall be alleged, as viewers, who shall, after having been sworn or affirmed to the faithful performance of their duty, assess the damages done, if any, to the petitioner and shall report the same to the said court, at the first week of the next regular term thereof after the said appointment, which report, upon its presentation as aforesaid, be confirmed *nisi*; and if an appeal be entered to the same on or before ten days from the first day of the week in which the same is presented, it shall then be confirmed absolutely and judgment entered by the prothonotary of the said court upon the same against the said company.⁴⁰

8. Compensation of Viewers.

The compensation of the viewers provided for by the first section of this act shall be the same as is now provided for road viewers and shall be paid by the defendant company, where damages are awarded, otherwise by the petitioner: *Provided*, That the provisions of this act shall not apply to the police patrol or department telegraph lines.⁴¹

The Act of June 8, 1881, P. L., 82, relating to the wanton destruction of trees was not repealed by the Act of June 2, 1891. The act is very broad and will cover any damages resulting from

³⁹ Act April 19, 1883, P. L., 13.

⁴⁰ Sec. 1, Act June 2, 1891, P. L., 170.

⁴¹ Sec. 2, Act June 2, 1891, P. L., 170.

the cutting of trees whether the same are growing by the side or on enclosed or unenclosed land adjacent thereto, if incurred through the exercise of eminent domain. When there has been negligence or wanton or unnecessary cutting, the remedy is an action in trespass. The measure of damages in proceedings under the Act of 1901 is the value of the property before the cutting of the trees and its value thereafter.⁴²

1649. Telegraph and Telephone Companies Must Receive and Forward All Messages Offered.

The various telegraph companies within the limits of this State shall be required to forward and receive over their lines all messages that may be offered for transmission by individuals or incorporated companies: *Provided*, The parties offering such messages or dispatches tender, for the transmission thereof, the amount of the usual fee for such transmission. And in case of refusal or neglect on the part of any of the agents of the telegraph lines in this State, to send or receive in their regular order, except as hereinbefore excepted,⁴³ such messages or dispatches by telegraph, the company shall be liable to a fine of one hundred dollars for each and every message so refused or neglected, to be sued for and recovered before any justice of the peace of this Commonwealth, as debts of like amount are recovered, the one-half of such fine to go to the State, and the other half to the party suing for the same: *And provided further*, That in any suit to be brought for the recovery of said fine, notice served on the president, director, agent or either of them shall be sufficient.⁴⁴

1650. Disclosure of Contents of Dispatches Forbidden.

It shall not be lawful for any person connected with any line of telegraph in this Commonwealth, whether as superintendent, operator or in any other capacity whatsoever, to use or cause to be used, or make known or cause to be made known, the contents of any dispatch of whatsoever nature, which may be sent or received over any line of telegraph in this Commonwealth, without the consent or direction of either the party sending or receiving the same.

(42) *Marshall v. Amer. Teleg. & Teleph. Co.*, 16 Pa. Super. Ct. 101 (1901).

(43) *i. e.*, Dispatches sent by officers relating to public affairs.

(44) Act of March 29, 1849, Sec. 15, P. L., 263.

the same; and all dispatches which may be filed at any office in this Commonwealth for transmission to any point, shall be so transmitted without being made public, or their purport in any manner divulged at any intermediate point, on any pretense whatever; and in all respects the same inviolable secrecy, safe-keeping and conveyance shall be maintained by the officers and agents employed upon the several telegraph lines of this Commonwealth, in relation to all dispatches which may be sent or received as is now enjoined by the laws of the United States, in reference to the ordinary mail service: *Provided*, That nothing in this act contained shall be so construed as to prevent the publication, at any time, of any dispatch of a public nature which may be sent by any person or persons with a view to general publicity.⁴⁵

1. Preservation of Original Messages—Their Introduction in Evidence.

It shall be the duty of all owners, superintendents and operators, to preserve the originals of all messages sent from such office, other than those intended for publication, for at least three years, and to produce the same in evidence, whenever duly subpoenaed to do so, by the individual or individuals, or counsel of the individual or individuals sending or receiving a copy of such messages in any court of justice, or before any committee of the Legislature where the same shall be decided by such court or committee to be material to any issue or matter there to be tried or determined, under the like penalty as in other cases: *Provided*, That confidential communications between attorney and client, so transmitted, shall in no case be divulged.⁴⁶

2. Employes of Telegraph Companies Exempt From Militia and Jury Duty.

The operators, assistant operators, clerks and other persons employed by the different telegraph companies in the State of Pennsylvania, while doing duty in the offices of said companies, along the routes of their telegraph lines, shall be exempt from militia duties and serving on juries and from any fine or penalty for neglect thereof.⁴⁷

⁴⁵) Sec. 7, Act April 14, 1851, P. L., 612.

⁴⁶) Sec. 2, Act May 8, 1855, P. L., 531.

⁴⁷) Sec. 1, Act April 8, 1862, P. L., 325.

1653. Limited Partnership Associations May Be Formed to Construct and Operate Telegraph and Telephone Lines.

When any three or more persons may desire to form a partnership association, for the purpose of conducting a lawful business or occupation, including the construction, equipment, installation and operation of a telephone or telegraph line, within the United States, or elsewhere, whose principal office or place of business shall be established and maintained within this State, by subscribing and contributing capital thereto, which capital shall also be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some competent person, a written statement, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed by each; the total amount of capital, and when and how paid; the character of the business to be conducted, and the location of the same; the name of the association, with the word "limited" thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed twenty years; the names of the officers of said association, selected in conformity with the provisions of this act; and any amendment or amendment shall be made only in like manner, which said statement shall be recorded in the office of the recorder of deeds of the proper county: *Provided, however,* that the capital stock of any telephone or telegraph company, incorporated or created in accordance with the provisions of this act, shall not be capitalized at more than the sum of five thousand dollars.⁴⁸

ESCHEAT OF PROPERTY OF TELEGRAPH COMPANIES ON THE CONSTRUCTION OF COMPETING LINES.

1654. On Consolidation, Franchises, Etc., of Competing Lines May Be Forfeited.

Whenever any telegraph corporation, telegraph association or telegraph company, chartered for telegraph purposes, and owning and controlling a telegraph line in this State, shall consolidate with any other telegraph corporation, telegraph association

(48) Act June 7, 1907, P. L., 432, amending Sec. 1, Act of June 1, 1897, P. L., 271.

graph company, chartered for telegraph purposes and owning and controlling a competing telegraph line, the said competing telegraph lines and all franchises, and property connected therewith, for the operation of the same, within this State, shall be forfeited to become the property of this Commonwealth.⁴⁹

5. Controlling Interest in Stock or Bonds to Work a Forfeiture.

Whenever any such corporation, association or company, own and controlling a line of telegraph, shall hold a controlling interest in the stock or bonds of any such other telegraph corporation, association or company, owning a competing line of telegraph, or shall acquire by purchase or otherwise any other competing line of telegraph, the stock or bonds so held, and the telegraph line, together with all franchises so purchased or otherwise acquired, shall be forfeited to and become the property of this Commonwealth.⁵⁰

6. How Forfeiture May Be Decreed.

Whenever any telegraph line, franchises, property, stocks, bonds become forfeited and escheat to the Commonwealth, under the first and second sections of this act, such forfeiture and escheat may be decreed under proceedings by quo warranto in any Court of Common Pleas of this State, from which decree any party interested may appeal to the Supreme Court at any time within six months after such decree, and not afterward: *Provided*, That any holder of stock or bonds of any such telegraph company, who shall have been opposed to the consolidation with or sale to the competing company, or shall not have assented thereto or acquiesced therein, may be admitted as a co-defendant in such quo warranto proceedings, and upon proof of such opposition or want of assent and acquiescence to the satisfaction of the court, it shall be lawful for the court to so mould the decree as to be without prejudice to the right of such innocent stockholder to hold his stock; and in case of an innocent bondholder that he shall be entitled to a *pro rata* share of the proceeds of the sale by the Commonwealth, as hereinafter provided, as his bonds shall bear to the whole amount outstanding; but in no case to exceed the par value of his bonds and accrued interest thereon.⁵¹

⁴⁹) Sec. 1, Act June 5, 1883, P. L., 84. See Secs. 37 and 1633.

⁵⁰) Sec. 2, Act June 5, 1883, P. L., 84.

⁵¹) Sec. 3, Act June 5, 1883, P. L., 84.

1657. After Final Decree of Forfeiture, Auditor General to

After a final decree of the court establishing the forfeiture escheat to the Commonwealth, as provided in section three of the act, the Auditor General shall expose to sale by public auction at the capitol, in Harrisburg, the telegraph line, franchises, property, stocks and bonds so escheated, after notice of said sale by publication for four successive weeks in at least one newspaper in each county through which the escheated telegraph line passes, and at said sale the said telegraph line, franchises, property, stocks and bonds shall be sold to the highest and best bidder for cash. *Provided*, That no such corporation, association or company engaged in operating a competing line of telegraph, shall become a purchaser at said sale; and upon the payment of the purchase money which the same shall be thus sold, and the filing with the Secretary of State of the certificate of the State Treasurer, that the money has been so paid, together with the certificate of the Auditor General setting forth the fact and terms of the sale, a deed for the telegraph line, franchises, property, stocks and bonds so sold shall be executed in the name and under the seal of the Commonwealth, to the purchaser or purchasers, signed by the Auditor General and attested by the Secretary of State, which deed shall constitute in the purchaser or purchasers a valid and sufficient title thereto.

1658. Courts May Inquire as to Consolidation of Competing Lines and Enforce the Constitutional Prohibition.

The said court shall have power to summon the officers and directors of such corporations, associations or companies, or either of them, by subpoena, citation or otherwise, as the said court shall direct, to appear before said court and produce all of its or their books and papers, and to examine them upon oath, to ascertain whether they are or any of them have violated the twelfth section of the sixteenth article of the Constitution of this Commonwealth. The said court shall have power to enforce their appearance by attachment, in the case of other witnesses, or the said court may direct to be served a writ of *habeas corpus* in the said court against the officers, directors or trustees of any such corporations, associations or companies, either of them, which the defendants therein shall answer under the compulsion usual in such cases, and the evidence so taken shall be

their answers may be used, in the said proceedings, to assert the rights of the Commonwealth.⁵³

1859. Purchasers From the Commonwealth of Escheated Property of Consolidating Competing Telegraph Company May Be Incorporated.

The purchaser or purchasers for or on whose account any telegraph line, franchises or property shall be purchased from the Commonwealth, as authorized by this act, where an organization is effected and a certificate filed as required in the proviso hereto, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, claim and demand in law and equity of, in and to such telegraph line, with its appurtenances and with all the rights, powers, immunities, privileges and franchises of the said corporation, association or company owning the said telegraph line, property and franchises at and immediately before the forfeiture thereof under sections one and two of this act; and the person or persons for or on whose account any such telegraph line, property and franchises shall be purchased, shall meet, within thirty days after the delivery of the deed from the Commonwealth, public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper, published in the city of Harrisburg, and organize said new corporation by electing a president and board of six directors, (to continue in office until the first Monday in May succeeding such meeting, when, and annually thereafter, on the said day a like election for president and six directors shall be held to serve for one year,) and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each; and may then, or at any time thereafter, create and issue preferred stock to such amount, and on such terms, as they may deem necessary; and from time to time issue bonds, at a rate of interest not exceeding ten per centum, to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the telegraph line, property and franchises, or on any part or parts

⁵³) Sec. 5, Act June 5, 1883, P. L., 84.

thereof: *Provided*, That the person or persons for or on account the purchase is made, shall organize by the election of a president and a board of directors as above provided within three calendar months after the delivery of the deed from the Commonwealth, and within one calendar month after such organization make a certificate thereof under its common seal, attested by the signature of its president, specifying the date of such organization, the corporate name adopted, the amount of capital stock, and the names of the president and directors, and transmit said certificate to the Secretary of State at Harrisburg, to be filed in his office and there remain of record, and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.⁵⁴

(54) Sec. 6, Act June 5, 1883, P. L., 84.

CHAPTER LXXIII.

TITLE INSURANCE AND TRUST COMPANIES.

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1660. History.

The incorporation of trust companies was not provided for in the Act of April 29, 1874, P. L., 73. Sec. 29 of that act provided for the incorporation of companies for the insurance of owners of real estate, mortgagees and others interested in real estate, against loss by reason of defective titles, etc., and Sec. 35 authorized the incorporation of safe deposit companies, but there was no provision for the incorporation of trust companies, nor was there in the prior act providing generally for their incorporation. It was not until the passage of the Act of May 24, 1881, P. L., 27, that trust companies might be formed under the Act of 1874, by incorporation under Sec. 29 thereof and then accepting the said provisions of 1881.

The Act of May 9, 1889, P. L., 159, amends Sec. 29 of the Act of 1874, directly, and without reference to the prior act of May 24, 1881, which it re-enacts, with amplifications, and it supersedes.

The Act of June 11, 1885, P. L., 111, gives to trust companies formed under special prior acts, certain powers enumerated therein. This act is superseded as to such companies, formed under special acts, by the Act of June 27, 1895, P. L., 399, which confers on all such companies accepting its provisions the powers (in addition to those granted by the Act of 1885) conferred upon corporations formed under the provisions of the twenty-ninth section of the Act of 1874, by the Act of May 9, 1889.

The amendment to the Act of May 9, 1889, P. L., 127, however, which permits trust companies formed under the Act of 1889 to receive deposits of money and other personal property, does not apply to companies not formed under the Act of 1874, the provisions thereof not being added to the Act of 1889 as re-enacted and made applicable to companies not formed under the Act of 1874, by the Act of June 27, 1895, P. L., 399. Nor does the provision in Sec. 2, of said Act of May 29, 1895, relative to the deposit of moneys paid into court, apply to such companies.

Trust companies, in order to gain the powers conferred by the Act of 1889 must incorporate under the Act of 1874 and

cept the provisions of said act as provided by Sec. 13 thereof,¹ companies not incorporated under said Act of 1874 must comply with the provisions of said section in a similar manner, provided in Sec. 2 of the Act of June 27, 1895, P. L., 399.

1. Incorporation of Title Insurance Companies Authorized.

Corporations may be formed under the provisions of this act . . . for . . . XIX. The insurance of owners of real estate, mortgagees and others interested in real estate, from loss by reason of defective titles, liens and incumbrances.²

2. Powers.

Companies which may have been heretofore, or which may hereafter be, incorporated under the provisions of this act for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens and incumbrances, shall have the power and right:

First. To make insurances of every kind pertaining to or connected with titles to real estate, and to make, execute and perfect the same and so many contracts, agreements, policies and other instruments as may be required therefor.

Second. To receive and hold on deposit and in trust and as security real estate, real and personal, including the notes, bonds, obligations of States, individuals, companies and corporations, and the power to purchase, collect, adjust and settle, sell and dispose of in any manner, without proceeding in law or equity, and for such terms, and on such terms as may be agreed on between them and parties contracting with them: *Provided*, That nothing herein contained shall authorize said companies to engage in the business of banking.^{2*}

Third. To make insurance for the fidelity of persons holding positions of responsibility and of trust, and to receive upon deposit for safe keeping, jewelry, plate, stocks, bonds and valuable property of every description, upon terms as may be agreed upon.

Fourth. To act as assignees, receivers, guardians, executors, administrators, and to take and receive and execute trusts of every

¹ See Bryn Mawr Trust Co., Op. Sec. Com., 6 Pa. C. C., 404 (1889).

² Secs. 1 and 2, Act April 29, 1874, P. L., 73.

^{2*} They may, however, purchase negotiable paper outright. *Guardian Trust Co. v. Grove*, 16 D. R., 975 (1907).

description not inconsistent with the laws of this State or of the United States, and to receive deposits of money, and to issue bonds or obligations therefor, to invest their funds, other than funds committed to their care by the Orphans' Court, in and to purchase real and personal securities, and to loan money on real and personal securities, and to invest funds committed to their care by the Orphans' Court in such securities as shall be approved by the courts.

Every court into which money may be paid by parties, or placed by order or by judgment, may, by order, direct that it be deposited with any such corporation.^{2**}

Fifth. To act as agents for the purpose of issuing or countersigning the certificates of stock, bonds or other obligations of any corporation, association or municipality, State or public authority, and to receive and manage any sinking fund thereof on such terms as may be agreed upon.

Sixth. To become sole surety in any case where by law more sureties may be required for the faithful performance of a trust, office, duty, action or engagement.

Seventh. To take, receive and hold any and all such property of real property as may have been, or may hereafter be, the subject of any insurance made by such companies under the powers conferred by their charter, and the same to grant, bargain, convey and dispose of in any such manner as they see proper.

Eighth. To purchase and sell real estate and take charge of the same.

Ninth. To act as security for the faithful performance of any contract entered into with any person, or municipal or other corporation, or with any State or government, by any person, persons, corporation or corporations.

Tenth. To become sole security for the faithful performance of the duties of any national, State, county or municipal officer, and to execute such bonds or recognizances as may be required by law in such cases.

Eleventh. To become security for the faithful performance of the duties of any clerk or employe of any corporation, company, firm or individual.

(2**) Paragraph 4 as amended by Act April 21, 1903, P. L., 223, amended the Act of June 29, 1895, P. L., 127, which act was amended by the Act of May 9, 1889, P. L., 159.

Twelfth. To become security for the payment of all damages that may be assessed and directed to be paid for lands taken in the building of any railway, or for the purposes of any railway, or for the opening of streets or roads, or for any purpose whatever where land or other property is authorized by law to be taken.

Thirteenth. To become security upon any writ of error or appeal or in any proceeding instituted in any court of this Commonwealth, in which security may be required: *Provided however*, that nothing in this act shall be so construed as to dispense with the approval of such body, corporation, court or officer, as is by law now required to approve such security: ³

33. Certificate of Paid-Up Stock—Acceptance of Act.

Provided, however, That before exercising any of the powers hereby conferred, each such corporation shall have a paid-up capital of not less than one hundred and twenty-five thousand dollars, an affidavit of which fact, made by the treasurer thereof, shall be filed in the office of the Secretary of the Commonwealth, and each such company, heretofore or hereafter incorporated, shall file in the office of the Secretary of the Commonwealth a certificate of its acceptance hereof made by formal resolution adopted at a regular called meeting of the directors, trustees, managers or other proper officers thereof and certified under the corporate seal of such company, and a copy of such affidavit and of such resolution certified under the seal of the office of the Secretary of the Commonwealth shall be evidence of compliance with the requirements thereof.⁴

34. May Guarantee the Payment of the Principal and Interest of Bonds Secured by Mortgage Upon Real Estate.

All companies, incorporated under the provisions of said act [the Act of April 29, 1874,] for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss, reason of defective titles, liens, and incumbrances, be and the same are hereby authorized and empowered to guarantee the payment of the principal and interest of bonds secured by mortgage upon real estate, and to make and execute such contracts

) Clause 1, Act May 9, 1889, P. L., 159, amending Sec. 29, Act of April 29, 1874.

) Clause 1, Act May 9, 1889, P. L., 159.

and policies as may be required therefor: *Provided*, That before any such corporation shall exercise the power conferred, capital to the amount of at least one hundred twenty-five thousand (\$125,000.00) dollars shall have been paid in cash into its treasury.^{4*}

1665. Capital Liable for Faithful Discharge of Duties of

Whenever such companies shall receive and accept the appointment of assignees, receiver, guardian, executor, administrator, or to be directed to execute any trust whatever, the assets of the said company shall be taken and considered as the assets required by law for the faithful performance of their duties aforesaid and shall be absolutely liable in case of default whatever.⁵

1666. Authorized Depositaries of Trust Funds.

Any executor, administrator, guardian or trustee, having the custody or control of any bonds, stock, securities or other assets belonging to others, shall be authorized to deposit the same for safe keeping with said companies.⁶

1667. Courts May Investigate the Affairs of Such Companies

Whenever any court shall appoint any such company, receiver, guardian, executor, administrator, or to execute any trust whatever, the said court may, in its discretion, or upon the application of any person interested, issue under its seal a mandate to the Banking Commissioner of Pennsylvania, requiring him to forward to said court a certified copy of the last annual report of such institution filed in his office, which said certified copy shall be filed at the number and term of said court at which said company shall have been approved by said court to act in its capacity; or the said court may, in its discretion, or upon the application of any person interested, issue under the seal of said court a mandate to the Banking Commissioner, requiring one of the bank examiners of the State of Pennsylvania to investigate the affairs and management of the company so appointed, or approved, who shall report to said court in the manner

(4*) Act June 1, 1907, P. L., 382.

(5) Clause 2, Act May 9, 1889, P. L., 159.

(6) Clause 3, Act May 9, 1889, P. L., 159.

investments are made and the security afforded to those by and for whom its engagements are held, which said report shall be filed of record as hereinbefore provided; and the expense of such investigation, or certified copy of the last report so filed in the office of the Banking Commissioner of the State and hereby required to be furnished to said court, shall be defrayed by the company so examined or reported upon: *Provided, however*, that the fees or charges against such company for such certified copy from the Banking Commissioner's office shall not exceed the sum of one dollar for the first page and fifty cents for each additional page: *And provided further*, That the expense of such special examination, as herein authorized to be required by said court, shall not exceed the compensation now allowed by law to the banking department for examination and report upon such institution: *And provided further*, That no other persons shall be appointed or permitted to make such examinations.⁷

68. Trust Funds to Be Kept Separate From Assets of Company.

The said companies shall keep all trust funds and investments separate and apart from the assets of the companies, and all investments made by the said companies as fiduciaries shall be so designated as that the trust to which such investments shall belong shall be clearly known.⁸

69. Courts May Order Moneys Paid Into Court to Be Deposited With Companies.

Every court into which moneys may be paid by parties or be sought by order or judgment may, by order, direct the same to be deposited with any such corporation.⁹

70. Trust Companies May Not

Establish branch offices or establishments¹⁰ nor may they engage in the business of conveyancing.¹¹

(7) Act June 7, 1907, P. L., 454, amending Clause 4, Act May 9, 1889, P. L., 159.

(8) Clause 5, Act May 9, 1889, P. L., 159.

(9) Sec. 2, Act May 29, 1895, P. L., 127.

(10) Branch office, Op. Atty. Gen., 4 D. R., 54 (1894).

(11) *Gauler v. Solicitors' Loan & Trust Co.*, 9 Pa. C. C., 634 (1891).

1671. Trust Companies are Under the Supervision of the Department.

Trust companies are under the supervision of the Commission of Banking.¹²

1672. Trust Companies Receiving Deposits to Establish and Maintain a Reserve.^{12*}

1673. Companies Incorporated Under Special Acts Granting Powers Conferred Upon Corporations Formed Under the Act of 1874 by Act of May 9, 1889.

Companies heretofore incorporated under the laws of the Commonwealth, with a paid-up capital of not less than one hundred and twenty-five thousand dollars, and authorized by their charters to make insurance for the fidelity of persons in various places of responsibility and trust, to receive for safe deposit stocks, bonds and other valuable personal property, to receive and hold on deposit and in trust real and personal estates, to receive money and allow interest thereon, and to purchase and sell notes, bonds or other obligations, to adjust and settle accounts with estates, individuals and corporations, shall be authorized to exercise all the additional rights, powers and privileges conferred upon companies incorporated under the provisions of Sec. 29 of the act, approved April twenty-ninth, one thousand eight hundred and seventy-four, and of the supplement thereto, entitled "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the ninth day of April, Anno Domini one thousand eight hundred and seventy-four, amending the twenty-ninth section of said act, to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act for the insurance of owners of real estate, mortgagees and others interested in real estate from loss by reason of defective titles, liens and incumbrances, approved the ninth day of May, Anno Domini one thousand eight hundred and eighty-nine, which reads as follows:" . . .¹³

(12) Certain Trust Companies, 11 Pa. C. C., 489 (1892).

(12*) See Secs. 999-1004.

(13) Sec. 1, Act June 27, 1895, P. L., 399. The remaining portions of this section is a re-enactment of the Act of May 9, 1889, P. L., 151, and is therefore omitted.

74. Acceptance of the Act.

Any company entitled to the benefits of this act and desirous of availing itself of the same, shall furnish the affidavit as to the paid-up capital required by the said supplementary act, and conform to all other conditions and requirements thereof applicable to companies organized under the provisions of said act, approved on the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, and the aforesaid supplement thereto.¹⁴

75. Suits May Be Brought Against Corporations' Sureties on Obligations Given to Municipalities by Officers or Contractors, in the County in Which the Municipalities Are Located.

It shall be lawful for any borough, city or other municipality in this Commonwealth, to which is given the bond or other obligation of any officer thereof for the performance of his duties, or the bond or other obligation of any contractor therewith for the performance of his contract, in which bond or obligation any corporation or surety company is the surety, to bring any suit, action or other legal proceeding upon said bond or obligation in the county in which the respective borough, city or other municipality is situate, with like effect as if the said corporation or surety company were a resident of the said county.¹⁵

76. Service of Summons of Process in Such Case.

The summons or other process shall be served upon the said corporation or surety company defendant by reading the same at the hearing of any president, vice-president, secretary, chief clerk, treasurer, or in the hearing of any other officer of said company, or of any director or agent thereof; or by giving any of the aforesaid officers or agents notice of the contents of said summons or other process, and giving him a true and attested copy thereof. If any of the aforesaid officers or agents cannot conveniently be found, then such service may be made by leaving a true and attested copy of the summons or other process at the dwelling house of such officer or agent, with an adult member of his family; and if said officer or agent resides in the family of another, then said attested copy may be left with an adult member

¹⁴) Sec. 2, Act June 27, 1895, P. L., 399.

¹⁵) Sec. 1, Act May 2, 1901, P. L., 111.

**1677. Service Within County Wherein Writ Issues—See
Other Counties.**

1678. Suit May Be Brought on Obligations Whereon Trust Companies Are Sureties in the Counties Wherein the Sureties of Such Obligations Has Been Approved.

(16) Sec. 2, Act May 2, 1901, P. L., 111.

(17) Sec. 3, Act May 2, 1901, P. L., 111.

ereof, judge of the Orphans' Court, register of wills, sheriff, magistrate, or any other judicial officer, has approved the sufficiency of said bond or undertaking.¹⁸

79. Service of Summons or Process.

It shall be lawful for the sheriff or other officer to whom any summons or process may be directed, to deputize any sheriff in any county to serve said summons or process upon the president or other principal officer, cashier, treasurer, secretary, chief clerk, or any manager or director of said company or corporation.¹⁹

80. Limitation of Amount of Loans to Officers and Directors of Trust Companies.²⁰

81. Certain Corporations May Become Sole Surety on Bonds.

Whenever any person, individually, or in any public or private trust, who is now, or hereafter may be required or permitted by law to make or execute and give a bond, or undertaking with security, conditioned for the faithful performance of any duty or for the doing or not doing of anything in said bond or undertaking specified, any head of a department, judge of the Supreme Court, clerk or prothonotary thereof, judge of the Court of Common Pleas, clerk or prothonotary thereof, judge of the Orphans' Court, register of wills, sheriff, magistrate or any other officer who is now or hereafter shall be hereafter required to approve the sufficiency of any such bond or undertaking, may, in the discretion of such officer, accept and approve the same, whenever the conditions of such bond or undertaking are guaranteed by a company duly authorized by the Insurance Department of this State to do business in this State, and authorized to guarantee the fidelity of persons holding positions of public or private trust; and such company may become sole surety in any case, where, by law, one or more sureties may be required for the faithful performance of any trust or duty: *Provided, however,* That where such bond or undertaking shall involve the safe keeping or faithful application of the assets of any fiduciary, such head of department, judge or other officer shall make such order or decree as shall assure the re-

¹⁸) Sec. 1, Act June 4, 1901, P. L., 364.

¹⁹) Sec. 2, Act June 4, 1901, P. L., 364.

²⁰) See Sec. 951.

tention of such assets within this Commonwealth, in such manner as such head of department, judge or officer may direct disposition thereof be made according to law.²¹

1682. Foreign Surety Companies May Be Sureties or Guarantors.

Whenever any bond, undertaking, recognizance or other obligation is, by law, or the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer required or permitted to be made, given, tendered or filed as a condition precedent to the performance of any act or obligation, or the refraining from any act, is required to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee will (may) be executed by a surety company qualified to act as surety or guarantor as hereinafter provided, and such execution by such company of such bond, undertaking, recognizance, obligation or guarantee shall be in full compliance with every requirement of every law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents or householders or freeholders, or that such sureties or both, or possess any other qualification.²³

Foreign surety companies will not be accepted as sureties for bonds to secure damages incurred through the taking of property under the right of eminent domain unless they are specifically authorized by their charters to become sureties in such capacity.

1683. Requisites to Doing Business in Pennsylvania.

Such company, to be qualified to so act as surety or guarantor, must be authorized under the laws of the State or country of its incorporation.

(21) Act June 25, 1885, P. L., 181.

(22) This Act does not relate to domestic surety companies. *Company Bonds*, Op. Atty. Gen., 17 Pa. C. C., 101 (1895).

(23) Sec. 1, Act June 26, 1895, P. L., 343. This Act held unconstitutional in so far as it purports to control the discretion of the Court in accepting any given company as surety. *In re Amer. Bond Trust Co.*, 4 D. R., 757 (1895).

(23*) Altoona & Beech Creek Terminal R. R. Co.'s Bond, 24 Pa. C. C., 561 (1901); Phila., Harrisburg & Pgh. R. R. Co.'s Bond, 31 Pa. C. C., 340 (1905). See *Emery v. Pa., Monongahela & Southern Ry. Co.*, 15 Pa. C. C., 636 (1905); 15 D. R., 149.

incorporated and its charter, to guarantee the fidelity of persons holding places of public or private trust, and to guarantee the performance of contracts other than insurance policies, and to execute bonds and undertakings required or permitted in actions or proceedings or by law allowed, must comply with the requirements of the laws of this State applicable to such company in doing business therein, must have a paid up, unimpaired and safely invested capital of at least two hundred and fifty thousand dollars, must have at least one hundred thousand dollars invested in securities created by the laws of the United States, or by or under the laws of the State or country wherein it is incorporated, or in other safe, marketable and interest-bearing stocks and securities, the value of which shall be at or above par and deposited with or held by the Insurance Commissioner or other corresponding officer of the State or country where such company is domiciled, or any State of the United States in which it is authorized to transact business, in trust for the benefit of the holders of the obligations of such company; its liabilities must not exceed its available assets, which said liabilities, however, shall be taken to be its capital stock, its outstanding debts and a premium reserved equal to fifty per centum of the annual premium on all outstanding risks in force; such company shall also, before transacting business in this State under this act, file with the Insurance Commissioner a certified copy of its charter or act of incorporation, a written application to be authorized to do business under this act, and a statement signed and sworn to by its president or one of its vice-presidents and its secretary or one of its assistant secretaries stating the amount of its paid up cash capital, particularly each item of investment, the amount of premium on existing bonds on which it is surety, the amount of liability for unearned portion thereof estimated at fifty per centum of the annual premium on all outstanding premiums for one year or less, and pro rata terms of more than one year, stating also the amount of its outstanding debts of all kinds; and if such company is incorporated under the laws of any other State or country than this State, shall, in addition thereto, file a power of attorney appointing one resident of this State upon whom service [of] process may be made as required by existing laws, whereupon, if the Insurance Commissioner be satisfied that such company is solvent and has the cash capital herein provided for and surplus assets in excess of its capital stock, its outstanding debts and the premium re-

serve specified, and that it has, in all respects, complied with the act. If the officer is qualified under this act, he shall issue to such company a certificate that it is authorized to become and be accepted as sole surety on all bonds, undertakings and obligations required or permitted by law or the ordinances, rules or regulations of any municipality, board, commission, organization or public officer, which said certificate shall be conclusive proof of the solvency and credit of such company for all the purposes and of its right to be so accepted as such sole surety on its sufficiency as such. Such company shall also annually, on the first month of January, file with the Insurance Commissioner a statement similar to that hereinbefore in this section provided for, and shall also furnish him with a certificate from the officer with which the deposit herein mentioned is required to be made, describing such securities so deposited and the manner in which they are held by him, and stating that he is satisfied that such securities are fully worth one hundred thousand dollars, and also shall furnish to the Insurance Commissioner with such other information as may be required, showing the condition and credit as he may require, signed and attested to as in this section required.²⁴

1684. Deposit of Money for Which Sureties Are Liable.

It shall be lawful for any party of whom a bond or undertaking is required to agree with his sureties for the deposit of all moneys for which said sureties are or may be held responsible with a trust company authorized by law to receive such deposits, if such deposit is otherwise proper, and for the safe keeping of any and all other depositable assets for which said sureties may be held responsible with a safe deposit company authorized by law to do business as such, in such manner as to prevent the withdrawal of such moneys and assets, or any part thereof, except with the written consent of such sureties, or an order of the court made on such notice to them as such court may direct.²⁵

1685. Companies May Not Deny Corporate Power.

No company having signed such a bond, undertaking or obligation shall be permitted to deny its corporate power to execute such instrument or incur such liability in any proceeding to enforce liability against it thereunder.²⁶

(24) Sec. 2, Act June 26, 1895, P. L., 343.

(25) Sec. 3, Act June 26, 1895, P. L., 343.

(26) Sec. 4, Act June 26, 1895, P. L., 343.

1886. Oaths in Cases of Execution of Trusts.

In all cases where a corporation is or shall be charged with the execution of any trust, the president, vice-president, trust officers, secretary, treasurer or secretary of such corporation, shall make the usual oath or affirmation directed to be taken by private persons in such other like cases.²⁷

1887—1888. Trust Companies May Execute Bonds Required of Liquor Dealers.²⁸**1889. Renewal of Charters of Trust Companies.²⁹****1890. How Distribution of Assets of Trust Companies to Be Made.**

In case of any distribution of the money, funds, property, or other assets whatsoever, of any trust company, by legal process or otherwise, distribution shall be made and preferred in the following order; namely:—

First. To pay all deposits in the trust company.

Second. To the payment and discharge of all the remaining liabilities of such trust company or corporation.

Third. The residue, if any, shall be distributed to the shareholders of the trust company or corporation, according to their respective legal rights.

Provided, however, That all trust money and property shall be kept separate, as provided by said act as supplemented, as aforesaid, and distributed to the beneficiaries accordingly.³⁰

1891. Liability of Stockholders of Trust Companies.

The question of the liability of stockholders of trust companies in Pennsylvania is not as accurately defined as it should be.

Section 1 of the Act of May 11, 1874, P. L., 135, provides as follows:

"From and after the passage of this act all stockholders in banks, banking companies, savings funds institutions, trust companies, and all other incorporated companies doing the business of banks or loaning and discounting moneys as such in this Commonwealth, shall be personally liable for all debts and deposits in their individual capacity to double the amount of the capital stock

²⁷) Act February 16, 1877, P. L., 3.

²⁸) See Act April 24, 1901, P. L., 103, and May 2, 1901, P. L., 124.

²⁹) See Sec. 1467.

³⁰) Act May 8, 1907, P. L., 192.

held and owned by each: *Provided*, That before such shall accrue, in case of banks already chartered, the stockholders shall, at a regular or adjourned meeting, declare by resolution otherwise their intention to accept the provisions of this act. Notice of their action shall, within thirty days thereafter, be filed in the office of the Auditor General and Secretary of the Commonwealth, setting forth at length their proceeding, and their intention to be bound by its provisions in the same manner and as fully as if the same had been a part of the original charter which they were incorporated."

It is probable that the term "trust companies" in the act would not be construed as referring to the class of corporations now so designated, but that it was merely a generic term for use, applicable generally to banks and savings funds. A careful reading of the act would indicate that the words were used in that sense by the Legislature. There being at the time of the passage of the act no law under which trust companies could be formed in Pennsylvania, the language in the act, even if used technically, might not improperly be construed to apply only to trust companies then existing under the provisions of special charters; but the question of the individual liability of stockholders of trust companies in Pennsylvania cannot be said to be fully determined until either an act is passed on the same, or the said Act of May 11, 1874, has been confirmed by the courts. Such companies, however, being incorporated under the Act of 1874, and said act generally providing for the liability of a stockholder only to the extent of stock subscribed for by him, the generally accepted opinion is that stockholders of trust companies are not held to a double liability.

1692. Liability of Trust Companies as Holders of Bank

The foregoing suggests the liability of trust companies as holders of shares of bank stock. Under the provisions of the Act of May 11, 1874, hereinbefore referred to, and those of Section 161 of the Act of May 13, 1876, P. L., 161, providing for the incorporation of said banks, as well as the twelfth section of the National Bank Act of June 3, 1865, the holders of shares of bank stock are liable for the contracts, debts and engagements of the bank in which they hold such stock in double the amount of the par value of the stock held by them. It is evident that the liability of trust companies

holding such stock is precisely the same as that of individual stockholders.

§33. Trust Companies Not Subject to License Tax as Real Estate Brokers.

Trust companies incorporated under the Act of April 29, 1874, and its supplements, having the corporate power of buying and selling real estate, are not real estate brokers within the meaning of the acts imposing the payment of a license tax upon such brokers.⁸¹

(31) *Com. v. Real Estate Trust Co.*, 211 Pa., 51 (1905), affirming 26 Super. Ct., 149 (1904).

CHAPTER LXXIV.

TURNPIKE COMPANIES.*

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94. Incorporation Authorized.

Corporations may be formed under the provisions of this act . . . for . . . IV. The grading, curbing, paving, macadamizing, construction and maintenance of any species of street, road or highway and the furnishing of the materials and labor therefor or the construction and maintenance of any species of road, other than a railroad, and of bridges in connection therewith.¹

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Act May 24, 1887, P. L., amending Sec. 2, of the Act April 29, 1874. Under this Act of 1887 classes of corporations may be created, viz.: turnpike and plank road companies, for the construction and maintenance of turnpikes, etc., and companies, formed for constructing roads, streets, etc., curbing, macadamizing the same, etc., but not for constructing their own roads to be operated by them. See Penna. Paving Co., 6 Pa. C. C., 122 (1888).

1695. Articles of Association.

The charter of a road company shall also state:

1. The kind of road intended to be constructed.
2. The places from and to which the road is intended.
3. The counties through which it is to pass, and the length of the road. All road companies incorporated under this statute shall, from the date of the letters-patent creating them, be governed, managed and controlled as follows, and shall be entitled to the benefits of all the general laws of this Commonwealth relating to regulating turnpike or plank roads.²

1696. Powers of Directors.

The directors of such corporation shall have full authority to appoint, agree and contract with such persons as they may think necessary to make and construct such road, and to fix the tolls hereinafter authorized, and to fix their compensation. They shall determine the times, manner and proportions in which the stockholders shall pay the amount of their respective shares; to carry on their work; to draw orders on the treasurer for the money so contracted by them, which orders shall be signed by the president, or in his absence by a majority of the directors, or by their clerk, and to do and transact all other acts, and all such things as by the by-laws, orders and regulations of such corporation shall be entrusted to them.³

1697. Entry Upon Lands.

It may be lawful for the directors of such corporation, with their superintendents, engineers, artists, workmen, and their tools and instruments, carts, wagons and other carriages, and beasts of draught or burden, to enter in and upon the lands contiguous and near to which the said road shall be made or constructed, first giving bond and proceeding as required in the forty-first section of this act.^{3*} Any such corporation may also enter upon the location of any part of its road which may intersect any graveyard or cemetery lot or lots.⁴

(2) Sec. 30, Act April 29, 1874, P. L., 85.

(3) Clause 1, Sec. 30, Act April 29, 1874, P. L., 85.

(3*) See Secs. 455, 461.

(4) Clause 2, Sec. 30, Act April 29, 1874, P. L., 85. This clause gives the right of taking lands for the construction of the turnpike, and to enter upon the lands contiguous and near it. *McManus's A. S. Super. Ct.*, 65 (1897).

98. Directors to Keep Accounts of Receipts and Expenditures.

The directors of every such corporation shall keep fair and just accounts as well of all moneys received by them as of those paid out and expended in the prosecution of the work, and shall, at least once in every year, submit their books and accounts to a general meeting of the stockholders.⁵

99. Power to Erect Bridges.

The directors of such corporation shall have power to erect good and sufficient bridges over all the streams of water crossed by their road, whenever the same shall be found necessary, and shall cause a road, if a turnpike, to be laid out not exceeding fifty feet in width, and cause at least eighteen feet of said width, exclusive of gutters, ditches or drains, to be made an artificial road of wood, stone, gravel or other proper and convenient materials, such as the nature of the ground may require and will afford, to be constructed in such manner as will admit an even surface, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of four degrees from a horizontal line; and if a plank road, the same shall be opened of any width not exceeding forty feet, and shall be graded in such manner as may be necessary for either a single or double track, as may be determined upon by the directors of the said corporation, each track being not less than eight feet in width, and so nearly level in its progress that it shall in no place rise or fall more than will form an angle of three degrees with a horizontal line: *Provided*, that if any part of the ground on the route of the said road shall not be so hard and compact as to make a good road without any covering of wood, gravel, stone, slate or other hard substance, the directors are hereby authorized to construct such part of said road without any such covering, and shall forever maintain and repair the same in good repair: *Provided*, That said bridges shall be constructed so as to obstruct the navigation of any stream crossed a public highway.⁶

100. When Corporations May Begin to Collect Toll.

Whenever such corporation shall have finished five miles or more of road, or, if the entire road be for a shorter distance, then

⁵ Clause 3, Sec. 30, Act April 29, 1874, P. L., 85.

⁶ Clause 4, Sec. 30, Act April 29, 1874, P. L., 85.

when completed, the Court of Quarter Sessions of the county shall appoint forthwith three skilful, judicious and interested persons to view and examine the same, and report by their oath or affirmation whether the said road is so far executed in a competent and workmanlike manner, according to the true intent and meaning of this act, and if their report shall be in the affirmative, then the said court shall, by its order, under the seal of the county, permit and suffer said corporation to erect and fix upon and across the said road as will be necessary and sufficient to collect from all persons otherwise than by the same tolls as is herein authorized and granted.⁷

1701. Rates of Toll.

When such corporation is licensed in manner aforesaid, it may and may be lawful for them to appoint such and so many collectors and gatherers as they shall think proper, to collect and receive from all and every person or persons using the said road, the rates and rates hereinafter mentioned, and to stop any person leading or driving any horses, cattle, hogs, sheep, coach, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh or any other carriage of burden or pleasure from passing through the said gate, until they shall respectively have paid the toll that is to say,^{7*}

For every mile in length, or portion of a mile, within which passing through a gate or not, of said road, completed as aforesaid, the following sums of money, and so in proportion for any greater or lesser number of sheep, hogs or cattle. For every score of sheep, one cent; for every score of cattle, two cents; for every score of horses, one cent; for every sleigh or sledge, one cent; for every horse drawing the same; for every sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh or any other carriage, coach, dearborn or wagon with four wheels shall be less than four inches in breadth, with one and one-half cents, and for every additional horse drawing the same, one cent; for every wagon of burden whose wheels are four inches and not exceeding seven inches wide, one cent; for every horse drawing the same; for every wagon of

(7) Clause 5, Sec. 30, Act April 29, 1874, P. L., 86.

(7*) Clause 6, Sec. 30, Act Apr. 29, 1874, P. L., 86.

breadth of whose wheels shall be more than seven inches, one-half
 cent for each horse drawing the same: *Provided*, That for any
 wagon, et cetera, carrying burden exceeding two tons in weight
 on wheels less than four inches wide, and for any wagon, et cetera,
 carrying burden exceeding four tons in weight on wheels less than
 six inches wide, double rates may be charged; and if any person
 or persons shall represent to the said company, or any of their of-
 ficers or employes, that he or she or they have traveled a less dis-
 tance than he, she or they have actually traveled along said
 road, with intent to defraud said corporation of its toll or any part
 thereof, such person or persons shall, for every such offense, be
 deemed guilty of a misdemeanor, and upon conviction thereof be-
 fore any alderman, magistrate or justice of the peace, shall be
 fined by such officer in any sum not exceeding ten dollars, to be
 paid one-half to the said corporation and the other half to the
 school fund of the township in which the offense was committed;
 and if said fine or penalty and the costs of the proceedings be not
 paid, then said alderman, magistrate or justice of the peace shall
 commit said offender to the county prison, there to remain until
 discharged by due course of law.⁸

And if any toll gatherer shall demand and receive toll for a
 greater distance than the person of whom such toll is demanded
 has actually traveled along said turnpike road or plank road, or shall
 demand and receive greater toll from any person or persons than
 the toll-gatherer is authorized to demand and receive by virtue
 of this act, such toll-gatherer shall forfeit and pay the sum of
 ten dollars for every such offense to the supervisors of the town-
 ship in which the forfeiture is incurred, to be expended in repair-
 ing township roads, and for the payment of which the said com-
 pany shall be responsible; and all such penalties and forfeitures
 shall be recoverable with costs of suit, before any justice of the
 peace of the county in which the offense is committed: ⁹ *Provided*,
 that no toll shall be demanded from any person or persons pass-
 ing and repassing from one part of his, her or their farm to any
 other part of the same farm; and all persons with their vehicles or
 carriages, going to or from places of public worship, or of military
 meetings or elections, and also all funeral processions, shall be

⁸ Sec. 1, Act June 30, 1879, P. L., 35, amending Clause 6, Sec. 30, Act
 April 29, 1874, P. L., 86.

⁹ Clause 6, Sec. 30, Act April 29, 1874, P. L., 86.

exempt from the payment of toll, when traveling on pike road.¹⁰

1702. Justices of the Peace to Be Inspectors of Road.

Justices of the peace shall be inspectors of roads within their township or borough, and whenever a complaint in writing, signed by two justices of the same, is made, that any part of a plank road or turnpike in their township or borough is out of repair, they shall, without delay, view and examine the road complained of. If they find such complaint to be true, they shall give notice in writing, of the defect to the toll-gatherer or person attending the gate nearest the place out of repair, and may, in their discretion, order such gate to be thrown open; but such justices shall not order the gate to be thrown open unless notice, in writing, has been given to the gatekeeper nearest the place out of repair, particularly describing such place, at least three days previous to making such order. Notice of such order shall be served on such gatekeeper, and immediately the gate ordered to be thrown open shall be kept open, nor shall it be again shut, nor shall any toll be collected thereat until the said two justices of the peace, of the township or borough where such road out of repair is located, shall issue a certificate that such road is in sufficient repair, and that the gate ought to be closed. Whenever any part of such road is out of repair, and the gate nearest to the place out of repair is situated in an adjoining county, any two justices of the peace of the township or borough in such adjoining county, where such gate is situated, upon complaint made to them, in writing, shall view and examine the road complained of and proceed thereon as provided in this act in the manner as if the portion of road complained of was situated in the township where such gate is situated. Whenever any gate is ordered to be thrown open, as herein provided, or whenever such justices of the peace refuse to grant a certificate that the road complained of is in sufficient repair, the company owning the gate, or the gate keeper attending the same in their behalf, may appeal from the order or decision of such justices to the Common Pleas of the county where such justices reside. The appellant, in filing a statement, in writing, of their order or decision, shall file with such appeal, verified by affidavit, to the prothonotary the

(10) Act June 30, 1879, P. L., 35, amending Clause 6, Sec. 3 of Act of March 29, 1874, P. L., 86.

such appeal shall be placed at the head of the list for the next term of said court, and disposed of as to law and justice shall appertain, without declaration or plea. The said appeal shall not be a *supersedeas* of the order to open the gate. If the court reverses the order or decision of the said justices, then such gate may be closed, but if it confirms the same, such gate shall not be closed until such justices of the peace grant a certificate that such road is in sufficient repair. Every keeper of a gate ordered to be thrown open who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or delay any person in passing, or take any demand any toll from any person passing, shall, for each offense, forfeit the sum of ten dollars to the party aggrieved. To each justice of the peace who shall view a plank or turnpike road, upon complaint made to him, shall be allowed the sum of ten dollars and fifty cents for each day spent by him in the performance of such duty; and if the road viewed shall be adjudged out of repair, such fees shall be paid by the company to which the road shall belong; otherwise they shall be paid by the party making the complaint. Such fee, when payable by the company, shall be paid by the toll-gatherer nearest that (place) of the road adjudged out of repair, on demand, and out of the tolls received or to be received by him, and may be recovered, with costs, of such toll-gatherer if he neglects or refuses to make such payment. The provisions of this section shall apply to all turnpike roads in existence in this Commonwealth governed and controlled by general laws.¹¹

§3. How Penalties and Costs May Be Recovered.—Sequestration.

In all cases of complaint made or suit instituted under the provisions of this act against any corporation, if the complainant shall fail to sustain his complaint or the plaintiff to sustain his case, as the case may be, the corporation shall be entitled to recover costs, as in other cases, from the complainant or plaintiff, as the case may be, and in all cases where any corporation, which

(1) Clause 7, Sec. 30, Act April 29, 1874, P. L., 87. The provisions of this clause are superseded, so far as they apply to plank roads and turnpikes—and, apparently, they do not apply to anything else—by the Act of April 22, 1878, P. L., 85, Sec. 5 whereof repeals said clause as to plank roads and turnpikes. See Sec. 1710, *infra*.

may have been chartered under and subject to the provisions of this act, shall be adjudged to pay any penalty or the costs of the proceeding authorized by this act, the party plaintiff or defendant shall have all the remedies for recovering of the same and costs, against the said corporation, that are provided for the recovery of debts or judgments of like amount in other cases, if the said corporation shall fail to make payment in full within twenty days after final adjudication, the Court of Common Pleas of the proper county, on application of the plaintiff or other person in his behalf, shall direct sequestration, and appoint a sequestrator, who shall have like powers and be subject to the regulations and requirements provided in the seventh and seventy-fourth sections of an act of the general assembly of this Commonwealth, entitled "An act relating to corporations, passed June sixteenth, one thousand eight hundred and eighty-six: *Provided*, That where the judgment is final before trial or is not appealed from as provided in this act, the corporation before proceeding to sequestration, shall file in the Court of Common Pleas of the proper county a transcript of the proceedings and judgment before the justice, which transcript shall be filed of record in the said court as under existing laws for the entering of transcripts of judgments in other cases, and the filing and entering shall have the effect of a judgment entered in the said court.¹²

1704. Penalty for Defrauding Company.

If any person or persons whosoever, owning, riding or driving any sulky, chair, chaise, phaeton, cart, wagon, sleigh or other carriage of burden or pleasure, riding or leading any horse or mule or gelding, or driving any hogs, sheep or other animals shall therewith pass through any private gate or bars, or over any private passageway or other ground, near to or through any gate erected, or which shall be erected in pursuance of this act, with an intent to defraud the company and avoid payment of the toll or duty for passing through any such gate, or if any person or persons shall, with such intent, take any horse or mule or gelding, or other animal, or any carriage from any sulky, chair, chaise, phaeton, cart, wagon, sleigh or other carriage of burden or pleasure, or practice any other

(12) Clause 8, Sec. 30, Act April 29, 1874, P. L., 89.

ent means or device with the intent that the payment of any such toll or duty may be evaded or lessened, all and every person or persons, in all and every or any of the ways or manners offending ¹³ shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof before any alderman, magistrate or justice of the peace, shall be fined by such officer in any sum not exceeding ten dollars, to be paid one-half to the company owning the turnpike road and the other half to the school fund of the township in which the offense was committed; and if said fine or penalty, and the costs of the proceedings, be not paid, then said alderman, magistrate or justice of the peace shall commit said offender to the county prison, there to remain until discharged by due course of law.¹⁴

705. Reservation of Power to Alter Rates of Toll.

The Legislature shall have power to alter the rate of toll fixed by this act, and the directors of any such company may lessen the same whenever they shall believe it necessary for the well being of the corporations or the community at large.¹⁵

706. Proceedings for Neglect to Keep Turnpikes in Repair.

If any turnpike or plank road company incorporated under the laws of this Commonwealth, shall neglect or refuse to keep their road in good traveling order and repair for the space of twenty days, and information thereof shall be given under oath or affirmation to any justice of the peace in the neighborhood and county, designating where and what respect said road is defective, such justice shall issue a precept to any constable of the county, requiring him to notify the gate-keeper nearest whose gate the part or parts of the road complained of is situated, that on a certain day and at a certain hour therein mentioned, not less than three nor more than six days thereafter, three freeholders will be chosen at his office to hold an inquest to inquire into the truth of the matter specified in said information, an attested copy of which precept shall be given by said constable to said gate-keeper at the time of serving said notice.¹⁶

(13) Clause 9, Sec. 30, Act April 29, 1874, P. L., 89.

(14) Act April 30, 1879, P. L., 35, amending Clause 9, Sec. 30, Act April 29, 1874, P. L., 89.

(15) Clause 10, Sec. 30, Act April 29, 1874, P. L., 89.

(16) Sec. 1, Act May 22, 1878, P. L., 85.

1707. Selection of Inquest.

The three persons mentioned in the preceding section, chosen as follows: At the time and place fixed as aforesaid said justice shall prepare a list of names of fifteen reputable freeholders of the vicinity, and the complainant and agent, or officer of the company shall alternately strike out one name from the list till only three names remain, which three shall be the persons to hold said inquest; should either party be unrepresented at the time of choosing said freeholders, the justice shall act for them, and should neither party be present or represented the justice shall appoint three disinterested freeholders to hold said inquest.¹⁷

1708. Duties of Inquest—Penalty for Neglect to Keep Road in Repair.

The inquest thus chosen shall, after having been duly sworn and affirmed, proceed to view the part or parts of the road complained of, and shall report to the said justice in writing, under the hands and seals, or the hands and seals of the majority of them, within five days after said view, whether the said road be out of order and repair as to be inconvenient or dangerous for travel, and if so found the said justice shall adjudge the said company to pay a fine of not less than twenty-five nor more than fifty dollars, payable to the road commissioners or supervisors of the township in which the portion of the road so found defective is situated, and shall enter judgment therefor as other judgments of like amount are now entered: *Provided*, That said company shall have the same right of appeal to the Court of Common Pleas of the proper county as in other cases of judgments of like amount entered before such justice: *And provided further*, That no proceeding shall be commenced under this act, unless the complainant or some other person shall have given fifteen days' previous notice in writing to the gate-keeper nearest to whose gate the part or parts of the road complained of is situate, specifying particularly the part or parts of the road alleged to be out of repair and the nature of the defect alleged, and notifying him that unless repaired within fifteen days complaint will be made as hereinafter provided.¹⁸

(17) Sec. 2, Act May 22, 1878, P. L., 85.

(18) Sec. 3, Act May 22, 1878, P. L., 85.

1709. Constables to Make Return of Defects in Turnpike Roads.

It shall be the duty of the constable of each township to make return to the Court of Quarter Sessions of the proper county of defects in turnpike and plank roads, in the same manner and to the same extent that they now make returns of defects in public roads; and the officers of every plank road or turnpike company, on indictment found on such return or information made by any citizen before a justice of the peace as in other cases, shall be liable to the same penalties for allowing defects in the turnpike or plank road under their control that road commissioners or supervisors now are for defects in public roads.¹⁹

1710. Repeal.

Clause seven of section thirty of the act, approved April twenty-nine, eighteen hundred and seventy-four, entitled "An act to provide for the incorporation and regulation of certain corporations," is hereby repealed so far as it applies to plank roads and turnpikes only.²⁰

1711. Sale of Property of Turnpike Companies by the Sequestrators Thereof for Payment of Debts.

In all cases where, under a writ of sequestration, the property and funds of a turnpike or plank road company are in charge of a sequestrator, and the debts of such company have not been liquidated, it shall be lawful for the Court of Common Pleas which awarded the writ of sequestration, when such court shall be satisfied that the interests of the creditors of the company shall be so best subserved, to grant, upon the petition of the sequestrator, an order authorizing and empowering such sequestrator to take and make public sale of the turnpike or plank road, or any portion thereof, and all the right, title, interest, property, possession, claim and demand in law and equity of such company of, in and to such turnpike or plank road, or portion thereof, with the appurtenances thereunto respectively belonging, at such place and upon such terms as the court shall direct; of which sale public notice shall be given once a week for three successive weeks, by publication in a newspaper in the county or in each of the counties in which the turnpike or plank road, or the portion thereof intended to

(19) Sec. 4, Act May 22, 1878, P. L., 85.

(20) Sec 5, Act May 22, 1878, P. L., 85. See Note 11.

be sold, is situated; and the net proceeds of such sale, and the confirmation thereof by the court, shall be applied under the direction of the court, to the payment of the debts of such corporation in the same manner as the receipts derived from the operation of the road are now applied under existing law.²¹

1712. Condemnation of Turnpikes for Public Use.

Whenever twenty-five or more resident taxpayers of any county in this Commonwealth shall petition the Court of Quarter Sessions of their county representing that any turnpike road or way, heretofore or hereafter constructed, upon which tolls are charged the traveling public under any general or special act, located wholly or in part in their county, and that it would be for the best interests of the people of their county for such road or highway, or any part thereof, to become a public highway free from tolls and toll-gates, it shall be the duty of such Court of Quarter Sessions to appoint a jury of view, consisting of five respectable citizens of the petitioners' county, to view and condemn such turnpike, road or highway, or part thereof, for public use free from tolls or toll-gates, and to assess the damages to the owner or owners thereof may be entitled therefor: *Provided, however,* That notice of the intended application for the appointment of such jury of view shall be published in two newspapers of general circulation in the petitioners' county, at least thirty days previous to the time of making the application, and that a copy of the petition in writing shall be served upon the county commissioners and the municipal authorities, at least ten days before making such application: *And further provided,* That such petitioners shall or cause to be served upon the county commissioners and the municipal authorities a written notice of the time and place of the meeting of such jury of view, at least five days before such meeting shall be had.²²

A description of the road in a petition is sufficient when it sets forth that the road begins at one of the terminal points of a turnpike, and is continuous therefrom to a line between

(21) Act June 25, 1885, P. L., 172.

(22) Sec. 1, Act June 2, 1887, P. L., 306. This act superseded Act of June 25, 1885, P. L., 170, which was held to be unconstitutional in *Commonwealth ex rel. of Allegheny County v. Allegheny Tpk. Co.*, 22 W. N. C., 105 (1888).

gh named in one county and another borough in an adjoining county.^{22*}

A Court of Quarter Sessions may appoint a jury to view and condemn a turnpike road for public use, although, on the petition of other parties, one year before the present application a jury had been appointed for the same purpose and had reported adversely to condemnation and its report was confirmed by the court.^{22**}

A Court of Quarter Sessions has the right, under the Act of June 2, 1887, P. L., 306, to appoint viewers to view and condemn a turnpike road, or a part thereof, although the act incorporating the road provided another method for its condemnation.^{22***}

13. Stenographer May Be Appointed—Qualifications and Duties of Master.

The said Court of Quarter Sessions may, in its discretion, appoint a competent stenographer to keep a faithful record of all proceedings before the viewers, and to furnish a full copy of his notes to be attached to and form a part of the record; and in addition to the five viewers provided for in the first section of this act, shall appoint a reputable person, learned in the law, who shall reside at all meetings of the viewers, to be known as a master and have the power to determine the admissibility of evidence, to issue writs of subpoena to compel the attendance of witnesses and the production of papers, and instruct the viewers upon matters of law, to which exceptions may be taken for the purpose of review, but shall not have a vote on any question of fact or value.

Before entering upon the discharge of his duties of master, he shall be sworn or affirmed, by the judge appointing him or by the clerk of the Court of Quarter Sessions, to discharge his duties faithfully, impartially and according to the best of his learning and ability; after being duly sworn or affirmed, he shall, at the first meeting of the viewers, swear or affirm the stenographer to the faithful discharge of his duties, and thereupon shall, separately, swear or affirm each viewer on his *voir dire* touching the competency to serve, his impartiality and disinterestedness, and a record

^{22*}) Factoryville & Abington Tpk. & Plk. Road Co., 19 Pa. Super. Ct., (1902).

^{22**}) Perkiomen & Sumneytown Tpk. Rd., 25 Pa. Super. Ct., 462 (1904); 28 Pa. C. C., 545 (1903).

^{22***}) Middletown & Harrisburg Tpk., 28 Pa. C. C., 449 (1903).

thereof shall be made, and, upon objection then made by person in interest, the court shall have the power in its discretion, cause shown, to revoke the appointment of any one or more viewers, and appoint others in lieu thereof; when the viewers are found to be disinterested and qualified to serve, the court shall administer an oath or affirmation to each viewer to perform his duties with fidelity, impartiality and according to the best judgment.²³

1714. Organization of Jury of View.

The members of such jury of view and the master, having been duly sworn or affirmed as provided for in the preceding sections of this act, shall organize, three members thereof, not including the master, shall constitute a quorum, with power to meet and perform the duties of such jury of view, and it shall be the duty of the jury of view to hear at least six witnesses at the request of the petitioners for or those opposed to making any turnpike, road or highway free from tolls and toll-gates, and a like number of witnesses on behalf of the company owning or operating such turnpike, road or highway: *Provided, however,* That such jury of view may report in favor of petitioners, if such jury of view is satisfied for the best interests of the people of their county, without hearing any witnesses, if no request is made by any party to have witnesses examined.²⁴

1715. Compensation of Jurymen.

Each jurymen, serving on any such jury of view, shall be allowed the sum of two dollars and fifty cents for each day necessarily employed thereon, and the master's compensation shall be fixed by the court, and warrants shall be drawn by the commissioners of the proper county on the treasurer of the county for the payment of the amounts to which said jurymen shall be entitled under this act, as well as the stenographer whom the court shall appoint.²⁵

1716. Time of Filing Report—What the Report Shall Contain.

Such jury of view shall, within thirty days after the

(23) Sec. 2, Act June 2, 1887, P. L., 307.

(24) Sec. 3, Act June 2, 1887, P. L., 307.

(25) Sec. 4, Act June 2, 1887, P. L., 308.

ment thereof, unless, in the discretion of the court, the time be extended, report to the court appointing the same, as follows:

First. The names of the members of the jury and master who attended each meeting thereof.

Second. The number, names, residences and ages of the witnesses examined before a jury.

Third. Whether or not the entire turnpike, road or highway is located in the petitioners' county, and if not, what proportion is so located, and whether or not it is for the best interests of the people of the petitioners' county for the turnpike, road or highway or a part thereof to be made free from tolls and toll-gates, and whether or not the same is condemned by such jury of view for public use, free from tolls and toll-gates, and if the whole of said turnpike, road or highway lying in the petitioners' county is not condemned, but only a part thereof, then such part shall be clearly designated and described; and to which report shall be attached a map^{25*} or draft of said turnpike road showing definitely the point between which the same is condemned for public use for the turnpike, road or highway, or part thereof, if the same shall be condemned for public use as aforesaid.²⁶

1717. **Exceptions to Report and Proceedings Thereon.**

Exceptions may be filed by any party aggrieved to the report of such jury of view, within thirty days from the time such report is filed, which exceptions shall be heard by the court in which such report is filed, and such court, after considering such exceptions, may refer the report back to the jury of view with instructions to make any further proceedings or testimony as the court may deem necessary and proper, or may set the same aside, or may confirm such report, and if no exceptions are filed to any such report, unless appeal is taken as provided for in section eight of this act and in such case the final confirmation of the proceedings shall await the result of the appeal from the assessment within thirty days from the time of filing thereof,) then such report may be confirmed or dismissed by the court. Any party aggrieved by the

(25*) The map need not show the entire turnpike, but only so much thereof as will show "definitely the points between which the same is condemned for public use." Factoryville & Abington Tpk. & Plk. Road, Pa. Super. Ct., 613 (1902).

(26) Sec. 5, Act June 2, 1887, P. L., 308.

thereof has become a township road, in every such case or part thereof shall, on the passage of this act, become a road, and kept in proper condition and repair by the commissioners of the proper county.³³

When any turnpike, or part thereof, has been or may be, appropriated or condemned for public use, free of any existing laws, and the assessment of damages thereon have been paid by the proper county, such turnpike or part shall be properly repaired and maintained at the expense of the county, city or borough in which the said turnpike, or part lies, or the same may be improved under any existing laws of said county, city or borough.^{33*}

**1723. Reversion to Original Owners When Abandoned
Not Kept in Repair by Township Authorities.**

Where any turnpike or plank road has been abandoned whole or in part, for not less than five years, the portion so abandoned, if not kept in proper repair by the township authorities, shall, upon due application to the proper court, after hearing, decree that the road has not been kept in proper repair, and the owners thereof in fee simple, or if kept in proper repair by the township authorities, shall be subject to the same use as township roads, and may be occupied or appropriated by the township authorities under the right of eminent domain.³⁴

1724. Erection of Toll Houses and Toll Gates Forbidden in Township Roads.

From and after the passage of this act it shall not be lawful for any turnpike road company to erect any toll house or toll gate within the limits of any borough, now incorporated or hereafter to be incorporated within this Commonwealth.³⁵

1725. Shareholders to Cast One Vote for Each Share of Stock.

In all elections or meetings of stockholders of any plank road or bridge company, incorporated under any act of this Commonwealth, every stockholder shall be entitled to cast one vote for each share of stock.

(33) Act July 10, 1901, P. L., 650.

(33*) Act April 20, 1905, P. L., 237. See Sec. 1723.

(34) Act June 11, 1879, P. L., 126. See Sec. 1722.

(35) Act June 6, 1893, P. L., 329.

every share of stock by him or her held in such corporation, to be
either in person or by proxy duly constituted by power of at-
torney in writing, attested by one or more subscribing witnesses.³⁶

726. Amendment of Charters of Turnpike Road Companies Incorporated by Special Acts of Assembly.

Any turnpike road company, duly incorporated within the State of Pennsylvania, that shall be desirous of improving, amending or altering the articles and conditions of the instrument upon which said corporation is respectively formed and established, it shall and may be lawful for such corporation to specify the improvements, amendments or alterations which are or shall be desired, and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated, as aforesaid; when, if the said court shall be of the opinion such alterations are or will be lawful and beneficial, it shall be the duty of said court to direct said writing to be filed in the office of the prothonotary of said court, and also direct notice to be inserted in one newspaper printed in the proper county for at least three weeks, setting forth that an application has been made to said court for such alteration, amendment or improvement of the charter of said corporation; and if no sufficient reason is shown to the contrary, it shall be lawful for said court, at the next term thereafter, to decree and declare by their order endorsed on said instrument, attested in the usual manner by the prothonotary under the seal of said court; and after decree is made and said amendments are recorded in the office for recording of deeds in said county, the same shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established, to all intents and purposes as if the same had originally been made part thereof.

The usual fees allowed by law for equal or similar services, shall be received by the respective county officers under the provisions of this act; and all the expenses of procuring said alterations or amendments and recording the same, shall be borne by the corporation applying therefor; and after said alterations or amendments shall be recorded as before directed, the same shall be duly certified to be recorded and delivered over to the applicants; and a copy of the record, duly certified, shall be at all times as good evidence as the original might or could be: *Provided*, That this

(36) Act June 11, 1879, P. L., 139.

1727. **Condemnation of Turnpikes Located in Whole
Upon the Line Dividing Two Counties—April
Jury of View.**

(37) Act June 4, 1879, P. L., 91. This act is superseded companies formed under the Act of April 29, 1874, by the Act of 1883, P. L., 122. See Sec. 1746. It is not superseded by corporations incorporated by special acts of assembly. Co. Phila., Bala & Bryn Mawr Tpk. Co., 12 Pa. C. C., 275 (1892).

Quarter Sessions at its next regular term, or its then current term, of both courts be in session at the same time. *And provided further*, That the said petitioners shall serve or cause to be served upon the county commissioners of both counties, or proper municipal authorities, written notice of the time and place of meeting of such jury of view, at least five days before such meeting shall be had. *And provided further*, That each of said Courts of Quarter Sessions shall forthwith after the appointment of said viewers, certify said appointment to the other.³⁸

728. Appointment of Stenographer and Master.

The Court of Quarter Sessions in which the said application shall first be filed may, in its discretion, appoint a competent stenographer to keep a faithful record of all proceedings before the viewers, and to furnish a full copy of his notes to be attached to and form a part of the record in each court; and, in addition to the viewers provided for in the first section of this act, shall appoint a reputable person, learned in the law, who shall preside at all the meetings of the viewers, to be known as a master and have the power to determine the admissibility of evidence, to issue writs of subpoena to compel the attendance of witnesses and the production of papers, and instruct the viewers upon matters of law, to which exceptions may be taken for the purpose of review, but shall not have a vote on any question of fact or value, which appointments shall forthwith be certified by said Court of Quarter Sessions, making said appointments, to the other Court of Quarter Sessions in which the proceeding is pending. Before entering upon the discharge of his duties as master, he shall be sworn or affirmed, by the judge appointing him or by the clerk of the Court of Quarter Sessions wherein said appointment is made, to discharge his duties faithfully, impartially and according to the best of his learning and ability; and, after being duly sworn and affirmed, he shall, at the first meeting of the viewers, swear or affirm the stenographer to the faithful discharge of his duties, and thereupon shall, separately, swear or affirm each viewer on his *voir dire* touching the competency to serve, his impartiality and disinterestedness, and a record thereof shall be made; and, upon objection then made by any person in interest, either of said courts shall have the power, in its discretion, on cause shown, to

(38) Sec. 1, Act April 28, 1899, P. L., 79.

revoke the appointment of any one or all of the viewers by it, and appoint others in lieu thereof; when the six viewers found to be disinterested and qualified to serve, the master shall administer an oath or affirmation to each viewer to perform his duties with fidelity, impartiality and according to his judgment.³⁹

1729. Organization of Jury of View—To Examine Witnesses.

The members of such jury of view and the master, having been duly sworn or affirmed as provided for in the preceding sections of this act, shall organize, four members thereof, not including the master, shall constitute a quorum, with power to meet and perform the duties of such jury of view, and it shall be the duty of such jury of view to hear at least six witnesses at the trial of the petitioners for or of those opposed to making any turnpike, road or highway free from tolls and toll-gates, and a list of witnesses on behalf of the company owning or operating the turnpike, road or highway: *Provided, however,* That the jury of view may report in favor of petitioners, if such jury shall decree it for the best interests of the people of the said county without hearing any witnesses, if no request is made by the petitioners to have witnesses examined.⁴⁰

1730. Compensation of Jurymen, Stenographer and Master.

Each jurymen, serving on any such jury of view, shall be allowed the sum of two dollars and fifty cents for each day necessarily employed thereon, and the master's compensation and the stenographer shall be fixed by the court appointing them, and warrants shall be drawn by the county commissioners of said counties on the respective treasurer of their counties for payment in equal shares of the amounts to which such jurymen, master and stenographer shall be entitled under this act.

1731. Report of Jury of View.

Such jury of view shall within thirty days after the adjournment of the last three thereof, unless, in the discretion of the court, the time be extended in which the petition be first filed, w

(39) Sec. 2, Act April 28, 1899, P. L., 79.

(40) Sec. 3, Act April 28, 1899, P. L., 79.

(41) Sec. 4, Act April 28, 1899, P. L., 79.

tion shall be certified to the clerk of said courts, report to each courts appointing the same, as follows:

First. The names of the members of the jury and the master who attended each meeting thereof;

Second. The number, names, residences and ages of the witnesses examined before the jury;

Third. Whether or not the entire turnpike, road or highway is located upon the line dividing the two counties, and if not, what portion of it is so located, and what portion is located entirely within each of the said counties, and whether or not it is for the best interests of the people of the petitioners' counties for the turnpike, road or highway, or a part thereof, to be made free from tolls and toll-gates, and whether or not the same is condemned, by such jury [of] view, for public use, free from tolls and toll-gates, and if the whole of said turnpike, road or highway lying in the petitioners' counties is not condemned, but only a part thereof, when such part shall be clearly designated and described, in which designation and description shall be set forth how much thereof is wholly within each of said counties, respectively, and how much and what part thereof is located upon the line dividing said two counties, and to which report shall be attached a map or draft of said turnpike road, showing definitely the points between which the same is condemned for public use, if the same be condemned for public use as aforesaid and showing also what portion of said turnpike road, so condemned, lies in each of said counties and what portion lies upon said county line.

Fourth. The amount of damages suffered by the person or persons owning and operating said road, occasioned by the condemnation and freeing thereof, and in cases where the whole, or the part so condemned and freed, does not lie upon the said county line, then to separately assess the damages suffered by the condemnation of the part lying upon the said county line, and the part or parts lying within each of the said counties.⁴²

732. Exceptions to Report—Proceedings Thereon—Confirmation or Dismissal of Report.

Exceptions may be filed, by any party aggrieved, to the report of such jury of view, in either of said courts, within thirty days from the time such report is filed therein, which exceptions shall

(42) Sec. 5, Act April 28, 1899, P. L., 79.

forthwith be certified into the other of said courts, and heard by the said courts sitting together, who, after considering such exceptions, may refer the report back to the jury of view, or the instructions to take any further proceedings or testimony, or the courts may deem necessary and proper, or may set aside, or may confirm such report; and if no exceptions be taken, either of said courts to any such report, unless appeal is taken, as provided for in section eight of this act (and in such case the confirmation of the proceeding shall await the result of the assessment from the assessment within thirty days from the time of the report thereof), then such report may be confirmed or dismissed by the said courts: *Provided, however,* If the said courts shall not confirm such confirmation or dismissal without a joint hearing of the said courts, sitting together, shall hear, consider and determine the question of a confirmation or dismissal of the report of the party aggrieved by the action of the said courts, or either of them, may remove the proceedings to the proper appellate court by writ of certiorari, within twenty days after final confirmation or dismissal, disapproval.⁴³

1733. On Confirmation of Report, Tolls to Cease and to Be Removed.

Immediately after the said Courts of Quarter Sessions shall confirm the report of any such jury of view, condemning any turnpike, road or highway, or part thereof, for public use, from tolls and toll-gates, the collection of tolls of every kind upon any such turnpike, road or highway, or part thereof, shall cease, and, thereupon, all toll-gates upon the said turnpike, road or highway, or part thereof, condemned shall be forthwith removed therefrom; and, the removal shall be the duty of the county commissioners of the respective counties to draw a warrant or warrants on the treasurer of the respective counties for the payment of any damages which may be assessed, as aforesaid, in the following proportions: ⁴⁴

1734. Payment of Damages.

For all damages assessed for that portion of the condemned turnpike, road or highway, lying upon the line dividing the counties, a warrant or warrants for one-half shall be

(43) Sec. 6, Act April 28, 1899, P. L., 79.

(44) Sec. 7, Act April 28, 1899, P. L., 79.

the county commissioners of each county; and for damages assessed for the condemnation of that portion of the turnpike, road or highway, condemned as aforesaid, and lying wholly within either of said counties, a warrant or warrants shall be drawn by the county commissioners of the county within which the same is located, which warrant or warrants shall be made payable to the party or parties legally entitled to such damages.⁴⁵

1735. Appeal to Court of Common Pleas.

An appeal to the Court of Common Pleas, from the assessment of damages, may be taken by the corporation owning or taking toll on said turnpike, road or highway, or by the county commissioners of either county, by the proper municipal authorities, or by thirty citizens of said counties, within thirty days after the approval of said report, and, thereupon, the court shall direct an issue, which shall be tried by a jury, according to the course of the common law as regulated by existing statutes, and judgment entered on the verdict, and the record thereof shall be remitted to the proper Court of Quarter Sessions for further action upon the whole case: *Provided, however,* That the said judgment shall be reviewable by the proper appellate court, upon appeal, as in other cases: *And provided further, however,* That the appeal from the assessment of damages, for the condemnation of that part lying upon the line dividing said counties, may be taken to the Court of Common Pleas of either county, and all appeals therefrom shall be tried in the court to which the first appeal is taken, unless removed therefrom by due process of law; but that all appeals from the assessment of damages, for the condemnation of any part lying wholly in either county, shall be taken to the Court of Common Pleas of the county wherein the same lies: *And provided further, however,* That if any appeal be taken in either county, a certificate of the filing thereof shall be filed in the Court of Quarter Sessions of the other county.⁴⁶

1736. Affidavit on Appeal—Costs.

Such appeal shall be accompanied by an affidavit made by an officer of said corporation, or by one of the county commissioners, or municipal officers, or by one of the thirty citizens, that the ap-

(45) Sec. 7, Act April 28, 1899, P. L., 79.

(46) Sec. 8, Act April 28, 1899, P. L., 79.

peal is not taken for the purpose of delay, but because the court firmly believes that injustice has been done, and, after such order shall be made in relation to the costs as to the parties shall appear just.⁴⁷

1737. Collection of Tolls on Parts Not Condemned.

If only a part of any such turnpike, road or highway is condemned, nothing herein contained shall be taken to abridge the right of the company, owning or operating such turnpike, road or highway, to maintain toll-gates and collect tolls upon the remaining parts of the road not condemned as aforesaid: *Provided*, That it shall be lawful so to condemn any portion of such turnpike, road or highway, unless such portion extend to one of the terminal points of such turnpike, road or highway, or is a portion lying within the limits of any borough incorporated under any general act of law, unless such portion be a continuous portion.⁴⁸

1738. Maintenance of Turnpike After Condemnation.

When any turnpike, or portion thereof, shall have been condemned, under the provisions of this act, for public use, and tolls or toll-gates, and the assessment of damages thereon have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper city, township or district, as other public streets therein are by law repaired and maintained.⁴⁹

When any turnpike, or part thereof, has been, or may be, appropriated or condemned for public use, free of toll, under any existing laws, and the assessment of damages thereon have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper county, city or borough in which the said turnpike, or portion thereof lies, or the same may be improved under any existing laws.^{49*}

(47) Sec. 9, Act April 28, 1899, P. L., 79.

(48) Sec. 10, Act April 28, 1899, P. L., 79.

(49) Sec. 11, Act April 28, 1899, P. L., 79.

(49*) Act April 20, 1905, P. L., 237. This act was held to be constitutional in *Com. ex rel. v. Bedford County Commissioners*, 16 Pa. D. & C. 161 (1907). See Secs. 1722, 1723.

739. Abandonment of Portions of Turnpikes Separated From the Longest Continuous Portion Thereof Remaining in Possession of the Turnpike Companies After Condemnation of Intermediate Portions Thereof.

Whenever an intermediate portion or portions of any turnpike, road or highway in this Commonwealth, originally owned or possessed by any turnpike, road or highway company, incorporated under any special or general law, or that may hereafter be incorporated under existing or future laws, has or have been appropriated or condemned to public use, free from tolls, or may hereafter, under existing or future laws, be appropriated or condemned to public use, free from tolls, leaving a portion or portions of such turnpike, road or highway still in the ownership or possession of such turnpike, road or highway company, but separated, as to ownership or possession, from another portion of said turnpike, road or highway, the last named being the longest continuous portion thereof also still remaining in the ownership or possession of such company, after such appropriation or condemnation, it shall be lawful for such turnpike, road or highway company, and such company is hereby authorized, to abandon any such portion or portions of such turnpike, road or highway, thus separated as aforesaid from the said longest continuous portion of said turnpike road or highway thus remaining in the possession or ownership of such turnpike road or highway company: *provided*, That nothing herein contained shall be taken to abridge the ownership or possession by such turnpike, road or highway company of the said longest continuous remaining portion of said turnpike road or highway, or of any other remaining portion or portions thereof, not thus abandoned or appropriated or condemned to public use, or to abridge in any way the right of such company to own, possess and operate, or to maintain toll-gates and collect tolls on such remaining portion or portions of said turnpike road or highway.⁵⁰

40. Procedure.

Any such turnpike, road or highway company desiring to abandon such portion or portions of their road shall proceed as follows: A special meeting of the stockholders of such company shall be called by resolution of the board of directors, or in such

⁵⁰) Sec. 1, Act June 4, 1901, P. L., 359.

other manner as may be provided by the by-laws of company, for the purpose of submitting to said stockholders subject of such proposed abandonment, which said special meeting shall be held at a designated time and place, after notice of the time and place and of the purpose of such meeting, by mail or otherwise, at least once a week during four successive weeks previous to the meeting, in at least one newspaper published in the county or borough wherein the chief office of said corporation is located. At such special meeting of stockholders, held pursuant to the provisions of this act, the subject of such proposed abandonment shall be submitted to the stockholders, and if upon such submission it shall be ascertained, by vote of the shares of stock represented at such meeting, that the persons and bodies corporate holding shares of stock in value of the stock of such turnpike company have voted in favor of such an abandonment of any such portion or portions of turnpike road or highway, such abandonment shall thereby be completed and accomplished, and the record of the proceedings of said meeting shall be made upon the minutes of said corporation, and such portion or portions of turnpike road or highway shall thereafter be considered as abandoned pursuant to the provisions of this act; and after such abandonment such portion or portions of road or highway company shall be deemed to have released all title, corporate rights and privileges of, in and to the same, and all or portions of road thus abandoned, and to be released from all responsibilities in relation thereto, and shall not thereafter be required to keep such abandoned portion or portions in repair, nor be allowed to collect tolls or maintain toll-gates on said portion or portions; and it shall thereupon become the duty of the directors or managers of said company to give notice, by mail or otherwise, to the township road supervisor or supervisors, or other public officer or officers having charge of public roads within the township or townships, city or cities, or borough or boroughes, of such abandoned portion or portions of turnpike road so abandoned; whereupon it shall become the duty of such road supervisor or supervisors, or other public officer or officers as affected by the case may be, to take charge forthwith of the portion or portions of road thus abandoned, and to care for the same in the manner as is required by law in regard to other public roads in such township or townships, city or cities, or borough or boroughes, said portion or portions of road to be thereafter considered as a public road or roads, until and unless the same should

be vacated by proper proceedings, under the laws relative to the vacation of public roads.⁵¹

1741. History of Legislation Relative to Turnpike Companies.

Turnpikes were the first class of corporations to be incorporated, for profit, in Pennsylvania. They were originally incorporated under special acts. The Act of January 26, 1849, P. L., 10, and supplements provided for the regulation of turnpikes after their incorporation under special acts, but, prior to the Act of April 29, 1874, there was no general act under which turnpike companies might be incorporated.

1742. Nature of Estate Taken by Turnpike Companies in Real Estate Condemned for Their Purposes.

The early acts authorizing the incorporation of turnpikes did not provide for compensation to the owners of land over which the turnpikes were built, except in case of damages to improvements. This was because all lands granted by the colonial proprietors were sold on a basis of one hundred and six acres for the price of one hundred, the extra six acres being given in consideration of the right reserved to build public highways through such lands without compensation. The acts incorporating turnpike companies gave such corporations the same powers in this respect which the Commonwealth had.⁵² The supplement to the Act of January 26, 1849, P. L., 10, of April 27, 1849, Sec. 1, P. L., 461, however, provided for the payment of damages to the owners of property taken by turnpike companies,⁵³ and such companies take only a mere easement or right of way.⁵⁴ See Sec. 455.

(51) Sec. 2, Act June 4, 1901, P. L., 359.

(52) *McClenachan v. Curwen*, 3 Yeates, 362; 6 Binney, 509 (1802). See, also, *Com. v. Fisher*, 1 Pen. & Watts, 462 (1830); *East Union Township v. Comrey*, 100 Pa., 362 (1882).

(53) *Perryville & Zelionople Plank Road Co. v. Thomas*, 20 Pa., 91 (1852); *Plank Road Co. v. Ramage*, *Ibid*, 95; *Perryville & Zelionople Plank Road Co. v. Rea*, *Ibid*, 97. The Act of May 14, 1850, Sec. 9, P. L., 154, provided that the advantages accruing to the land owner by the construction of the turnpike should be taken into consideration in the assessing of damages.

(54) *Fisher v. Coyle*, 3 Watts, 417 (1834).

1743. Toll-Gates.⁵⁴

It seems that the Turnpike Act of 1849 gave turnpike companies the discretion to erect as many gates and at such places as they may believe to be necessary, so that they do not collect more than authorized.⁵⁵

A turnpike company the road of which, by the extension of municipal limits, becomes a portion of a street of a city, may erect toll-gates within the limits of the city and collect tolls there. Where it does so, the city has power to agree with the company to abandon the right to take toll within the city and to repair the gate in consideration that the city shall keep the turnpike within the city in repair.⁵⁶

A toll-gate located by a turnpike company, in a proper place within the limits of a municipality, is not such a nuisance as will justify the municipal authorities in removing it in an arbitrary and violent manner.⁵⁷

Turnpike companies have the right to erect toll-houses or toll-gates for the accommodation of their toll-gatherers, within the limits of the road.⁵⁸

By Act of 1810 a turnpike company was authorized to erect a pike, but were prohibited from erecting a toll-gate within the limits of Perkiomen Bridge. This prohibition was repealed by Act of 1867, and this latter act was again repealed by Act of 1896. Both acts being after the Constitutional Amendment of 1872, subject to its provisions. Held, that the company might erect the gate.⁵⁹

1744. Collection of Tolls.

Turnpikes may not recover toll for traveling on their roads from individuals by action. Their only method of collection is by demand and receive it at their toll-gates.⁶⁰

The Act of January 26, 1849, P. L., 10, authorizing

(54*) See Sec. 1724.

(55) *Providence and Abington Tpk. Rd. Co. v. Scranton*, 17 Pa., 481 (1896).

(56) *Providence and Abington Tpk. Rd. Co. v. Scranton*, 17 Pa., 481 (1896).

(57) *Conestoga & Big Spring Valley Tpk. Road Co. v. Lancaster*, 151 Pa., 543 (1892).

(58) *Ridge Tpk. v. Stover*, 2 W. & S., 548 (1841).

(59) *Zimmerman v. Perkiomen, etc., Turnpike Co.*, 81* Pa., 481 (1896).

(60) *Tpk. Co. v. Brown*, 2 Pen. & Watts, 463 (1831); *Chesapeake & Delaware Canal Tpk. Co. v. Martin*, 12 Pa., 361.

tion of gates and bars, etc., and imposing a penalty for fraudulently passing around or through the gates, does not provide a remedy by suit at law for the collection of the tolls so fraudulently withheld.

The Act of April 6, 1850, P. L., 518, is local, relating only to a turnpike in Philadelphia county. Sec. 6, Act of April 20, 1874, P. L., 85, as amended by the Act of April 30, 1879, P. L., 35, imposes toll rates "whether passing through a gate or not, of said road," but it does not say how the toll shall be collected, nor authorize a suit at law.⁶¹

But where a person has given a written acknowledgment of indebtedness for tolls, an action by the turnpike company will lie.⁶²

1745. Persons Passing From One Part of Their Farms to Another.

The proviso in the first section of the Turnpike Act of March 17, 1806, that toll shall not be demanded of a person passing from one part of his farm to another along the road, does not extend to farms detached from each other,⁶³ but it does where the jury find that two separate lots were operated as one farm.⁶⁴ Cl. 7, of Sec. 30, of the Act of April 29, 1874, provides that toll shall not be demanded from any person passing from one part of his farm to any other part of the same farm.

1746. Amendment of Charters of Turnpike Companies.

The charters of turnpike companies incorporated under the Act of April 29, 1874, may be amended under the provisions of the Corporation Amendment Act of June 13, 1883. See Secs. 103, 1726.

The power to amend charters of turnpike companies is conferred by the Act of June 4, 1879, P. L., 91, upon the Courts of Common Pleas when such courts shall be of opinion that said alterations are lawful and beneficial,⁶⁵ and said Act of 1879 was not

(61) *Kerr v. Sharpsburg & Kittanning Tpk. Rd. Co.*, 17 Pa. C. C., 659 (1896).

(62) *Beeler v. Pittsburgh Farmers' & M. Tpk. Co.*, 14 Pa., 162 (1850). As to tolls on vehicles carrying United States mails see *Hopkins v. Stockton*, 2 W. & S., 163 (1841).

(63) *Respublica v. Carmalt*, 4 Yeates, 416 (1807).

(64) *Com. v. Carmalt*, 2 Binn., 235 (1810).

(65) *Blockley & Merion Tpk. & P. R. Co.'s Appeal*, 140 Pa., 177 (1891).

repealed by the Act of June 13, 1883, P. L., 122, providing for the amendment of charters of corporations of the second class. So far as it relates to turnpike companies formed under special acts.

Where an amendment to a turnpike charter is made by the Court of Common Pleas, and under the decree, which is unappealable, from, the company in good faith, and without warning or notice on the part of the Commonwealth, expends a large sum of money in extending its road under its amended charter, the Court of equity will refuse its aid to the Commonwealth, after first leaving it to its remedy at law, by which is meant not only a writ, but would accomplish the same results as a mandatory injunction, such as quo warranto or an indictment for nuisance, but the right of law to recover damages for any injury received.⁶⁷

1747. Sequestration of Turnpikes.

While the sequestration of the revenues of corporations of the second class was abolished by the Act of April 7, 1870, P. L., 122, expressly provided by Cl. 8 of Sec. 30 of the Act of April 7, 1870, that sequestration shall be instituted against turnpike companies failing to pay penalties or costs of proceedings authorized by special act, and the Act of June 25, 1885, P. L., 172, provided for the sale of franchises and property of turnpikes by sequestration in certain circumstances.⁶⁸

1748. Turnpikes Are Public Highways.

A turnpike in use by the public is a public highway, within the meaning of Sec. 33, Act of April 29, 1874, permitting turnpike companies to construct their lines on public roads, streets, or highways.⁶⁹ And steam heating companies may lay their pipes upon them, under the Act of 1874 and the supplement of 1887, P. L., 310.⁷⁰

(66) *Com. v. Bala & Bryn Mawr Tpk. Co.*, 153 Pa., 47 (1895), 10 C. C., 275.

(67) *Com. v. Bala & Bryn Mawr Tpk. Co.*, 153 Pa., 47 (1895), 10 C. C., 275. Amendment of charters of turnpike companies incorporated under special acts, see Sec. 1726.

(68) See Secs. 1703, 1711, *supra*.

(69) *People's Telegraph & Telephone Co. v. Berks & Dauphin Tpk. Co.*, 199 Pa., 411 (1901).

(70) *Berks & Dauphin Tpk. Rd. Co. v. Lebanon Steam Co.*, 5 Pa., 354 (1888).

An indictment will lie against one obstructing a turnpike, as for public nuisance, the turnpike being a public highway.⁷¹

749. On Forfeiture of the Charter of a Turnpike Company the Right of Way Does Not Revert to the Owner of the Fee.

Upon the forfeiture and repeal of the charter of a turnpike company, the public right of way does not revert to the owner of the fee, but the road still remains a public highway, though discharged of tolls.⁷² And it must be maintained in good order by the municipality within which the road is located.⁷³

750. Appropriation of Existing Highways by Turnpike Companies.

A turnpike company incorporated under the Act of April 29, 1874, by a charter which specifies the termini of its roadway, but is silent as to the intermediate route, may not appropriate an existing public highway merely to avoid the expense of acquiring a new route through private property.⁷⁴

Where township supervisors have repaired and maintained as a county road an abandoned turnpike, under the Act of April 5, 1870, P. L., 48, equity will enjoin another turnpike company, which by virtue of its right of eminent domain entered upon and took a certain part of said road, from taking tolls for travel on said turnpike road until it shall have paid said supervisors all sums of money, and for all labor, with interest, expended by the township upon the road.⁷⁵

Where a turnpike road company has occupied a public highway for nine years and maintained it, having received due authority from the local authorities so to do, the fact that it is not authorized by its charter to occupy a public highway, will not be permitted to be raised, though it might have been at the outset.⁷⁶

(71) *Northern Central Ry. Co. v. Com.*, 90 Pa., 300 (1879).

(72) *Pitts., McK. & Y. R. Co. v. Com.*, 104 Pa., 583 (1883).

(73) *Pitts., McK. & Y. R. Co. v. Com.*, 104 Pa., 583 (1883). See Secs. 2, 1723, 1738.

(74) *Groff's Appeal*, 128 Pa., 621 (1889); *Groff v. Bird-in-Hand Tpk.*, 128 Pa., 150 (1891).

(75) *Ephrata Township v. Clay & H. Tpk. Co.*, 192 Pa., 40 (1899).

(76) *Wenger v. Rohrer*, 3 Pa. Super. Ct., 596 (1897).

1751. Damages Resulting From the Construction of Turnpikes.

The Act of January 26, 1849, P. L., 10, provided for compensation to the owners of lands taken for the beds of turnpikes, but the supplement of April 7, 1849, provided for the damages for this injury, to be assessed in the manner fixed by § 19 of the original act. By that section it is provided that the property is not to be taken until the assessed damages are paid or their payment secured. This provision is not in the supplement of April 7, 1849. Consequently a person making entry before payment made or security given is a trespasser, and an action of trespass *quare clausum fregit* lies.

A tenant for years is the owner of an estate in the land, and is therefore entitled to compensation for an injury done to his estate by a turnpike road company in the construction of a turnpike. He is an "owner of land" within the meaning of the Act of April 7, 1849, P. L., 461, amending the original Turnpike Act of January 26, 1849.⁷⁸

1752. Right by Prescription to Use Highways.

Where turnpikes have extended their roads and occupied public highways for a number of years, both private parties and the Commonwealth will, after such lapse of time, be barred by prescription from questioning the right.⁷⁹

1753. Failure of Turnpike Road Companies to Keep Roads in Repair.

A turnpike company was incorporated under an act which provided that if it did not keep its road in repair, said fact being proved by inquisition, the right of the company to collect tolls should be suspended until the road was put in repair. Held, that the said provision was not exclusive of the right of the Commonwealth to issue a writ of *quo warranto*.⁸⁰ But where a company was incorporated under the Turnpike Act of January 26, 1849, which provided for a remedy against companies for neglecting to keep the roads in repair,

(77) *Brown et al. v. Powell*, 25 Pa., 229 (1855).

(78) *Allegheny & Perrysville Turnpike Road Co. v. Brosi*, 10 Pa., 185 (1853).

(79) *Com. v. Bala & Bryn Mawr Turnpike Co.*, 153 Pa., 100 (1887); *Wenger v. Rohrer*, 3 Pa. Super. Ct., 596 (1897).

(80) *Birmingham & Eliz. Tpk. Rd. Co.*, 1 Penny., 458 (1848).

repair, it was held that a bill for an injunction to restrain it from collecting tolls until proper repairs were made would not lie.⁸¹

1754. Failure to Organize and Complete Road Within Requisite Time.

Where a turnpike company has neglected for two years or more to organize, as required by the Act of May 16, 1889, P. L., 241, amending the Act of April 29, 1874, and complete its road within five years, it must be presumed to have abandoned its franchises, at least to the extent of allowing the public to use so much of them as it may need, but in such case it is entitled to equitable compensation, and viewers must consider the claims of the company separately from those of landowners.⁸²

1755. Subscriptions to Stock of Companies Formed Under the Act of 1849.

The provision in the Act of 1849 for the payment of "hand money" upon subscriptions, refers only to subscriptions made before incorporation, and not to those made thereafter.⁸³

1756. Condemnation of Turnpikes.

Where a turnpike road is taken by a county, the measure of damages is the value of the property to the owners, and not to the county taking it, and such value is to be ascertained, not merely by the value of the structure, but also by the value of its franchises, which latter value depends largely upon its earning capacity. Evidence is admissible, however, as to the physical condition of the road when taken, and if there be any evidence of the original cost of the road, such evidence may be considered by the jury, but it is not controlling. The reports made by the company to the State authorities for purposes of taxation are competent evidence as to the value of the capital stock.⁸⁴ But where it was sought to condemn but twenty-two hundred feet of a turnpike thirty-three miles long, it was held that evidence of what re-

(81) *Com. v. Wellsboro & Tioga Plank Road Co.*, 35 Pa., 152 (1860).

(82) Read in *Ransom & Lack. Townships*, 18 Pa. C. C., 417 (1896).

(83) *Erie & W. Plank Rd. Co. v. Brown*, 25 Pa., 156 (1855). See *Phila. & W. Chester R. Co. v. Hickman*, 28 Pa., 318 (1857).

(84) *West Chester & Wilmington Plank Rd. Co. v. County of Chester*, 2 Pa., 40 (1897); *Chambersburg & Bedford Tpk. Road*, 20 Pa. Super., 173 (1902).

turns the company had made to the State, the amount stock had been appraised therein, etc., was not admissible.

The measure of damages in condemning a turnpike of the property to the owners at the time of taking, value of the tangible property, but the entire property including the value of the franchises in connection with it. The roadway of a turnpike is property, and is worth the pecuniary value of the property, and is worth the pecuniary value what it would have cost the latter to have graded and macadamized the road as it was when taken.⁸⁶

The Act of June 25, 1885, P. L., 170, providing for the appropriation of turnpikes by counties, is constitutional. The right of an appeal is supplied by the Act of June 13, 1874, providing for appeals in certain cases, which is not unconstitutional.⁸⁷

The object of the Act of June 4, 1887, P. L., 306, is to give by right of eminent domain the franchises and other property of highway and turnpike companies subject to its provisions. The evidence as to the bad condition of the turnpike sought to be condemned is relevant, as furnishing one reason for condemnation. The act is general and not local. Notice to persons interested is provided by Sec. 1.⁸⁸

The exception which may be taken for the purpose of an appeal under the Act of June 2, 1887, P. L., 306, refers to the exceptions given by the master to the viewers upon matters of fact, not to the admissibility of evidence, issuing writs of habeas corpus, compelling the attendance of witnesses and production of documents. The jury of view may consider evidence independently offered before the master.⁸⁹

In proceedings to free a turnpike under the Act of June 2, 1887, interest is not allowable on the amount of the verdict. An appeal to the Supreme Court.⁹⁰

(85) *Perkiomen & Reading Tpk. Rd. Co. v. Berks Co.*, 10 Pa. Super. Ct., 400 (1900).

(86) *Somerton Tpk.*, 16 Pa. Super. Ct., 400 (1901).

(87) *Carbondale & Providence Tpk. Co.*, 17 W. N. C., 310 (1897).

(88) *Condemnation of Harrisburg & Cornwall Tpk. Co.*, 10 Pa. Super. Ct., 51 (1898).

(89) *Chambersburg & Bedford Tpk. Rd. Co.*, 20 Pa. Super. Ct., 400 (1902).

(90) *West Chester & Wilmington Plank Rd. Co. v. Chester Co.*, 86 (1897).

Where a railroad company, having the right to occupy a turnpike road, buys the turnpike franchises, and, without laying its tracks on the pike, collects tolls for the use of the road, proceedings may be had under the Act of June 2, 1887, P. L., 306, to free the pike from tolls, without prejudice to the company to lay its tracks on the route of the turnpike when ready to do so.⁹¹

A turnpike road chartered prior to the Constitution of 1837, and made subject to the provisions of the Act of February 24, 1806, providing a method for the condemnation of the road, is nevertheless subject to the Act of June 2, 1887, which provides a different method for the assessment of damages for the taking of the road for public use. The latter act impairs no contract between the State and company, as it affects the remedy only.⁹²

Where toll houses are located without the right of way of a turnpike road, on land purchased by the company to be used for that purpose, title to them is not divested by condemnation proceedings, but the jury may allow for their depreciation in value because of the condemnation of the turnpike.⁹³

(91) Phila., Newtown, etc., R. R. Co.'s Appeal, 120 Pa., 90 (1888) ; 4 Pa. C. C., 399.

(92) Vacation of Centre and Kishacoquillas Tpk. Rd Co., 23 W. N. C., 68 (1899).

(93) Chambersburg & Bedford Tpk. Co., 20 Pa. Super. Ct., 173 (1902).

CHAPTER LXXV.

WATER COMPANIES.

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1757. History of Incorporation of Water Companies.

Like all other corporations in Pennsylvania, water companies were originally incorporated wholly by special acts. The Act of March 11, 1857, P. L., 77, was entitled "An act to provide for the incorporation of gas and water companies," but it did not provide for the incorporation of either gas or water companies, but merely for the regulation of such companies when they had been formed under the authority of special acts. This act is found *supra*, Secs. 875 to 895. Its provisions regulate water companies formed under the provisions of special acts from the time of its passage to the adoption of the Constitution of 1872; such companies have not accepted the provisions of the Constitution and the Act of April 29, 1874.

By the Act of February 27, 1872, P. L., 20, the Courts of Common Pleas of the several counties were authorized to incorporate water companies, and as there has been no repeal of said act, the courts, may apparently, still incorporate such companies, although there would be no advantage in such incorporation, and many disadvantages.

Water companies are now formed and regulated under the provisions of the Act of April 29, 1874, P. L., 73, and the supplements thereto.

1758. Changes Effected in the Laws Relating to Water Companies by Recent Legislation.

Since the publication of the first edition of this work many important and radical changes have been effected by legislation in relation to water companies.

The Act of April 13, 1905, P. L., 152, (Sec. 1771), provides that water companies incorporated after the passage of this act shall not have the right to appropriate streams, rivers or other public property of this Commonwealth or any of them, nor the lands adjacent thereto, thereby, under the right of eminent domain.

The Act of May 4, 1905, P. L., 385 (Secs. 1802-1808), created a Water Supply Commission of Pennsylvania, by the fifth section of which act it is provided that no letters patent shall be issued to any company desiring to be incorporated for the purpose of supplying water to the public in any community in the Commonwealth until said application is first submitted to and has received the approval of a majority of the said commission. This requirement was re-enacted and extended to water companies of all other kinds by Sec. 1 of the Act of June 7, 1907, P. L., 455.

By the Act of April 22, 1905, P. L., 264 (Sec. 1801), railroad companies of this Commonwealth are authorized to acquire, own and hold, etc., the stock, bonds and other securities, or either, of water companies and to guarantee the same.

By the Act of May 28, 1907, P. L., 278 (Secs. 1809, 1810), water companies obtaining any part of their supply within the limits of any municipality are required to furnish such municipality and its inhabitants with water.

By the Act of June 7, 1907, P. L., 455 (Secs. 1812, 1813), mergers and consolidations of water companies may not be approved by the Governor until the same have been first approved by the Water Supply Commission of Pennsylvania, and by Sec. 3 of the same act sales and conveyances of the property and franchises of water companies may not be made without the approval of said commission.

The Act of June 7, 1907, P. L., 455 (Sec. 1814), provides for the acquirement of new or additional sources of supply by water companies formed subsequent to June 7, 1907.

The Act of April 22, 1905, P. L., 260 (Secs. 1816, 1817), provides that all water companies in existence at the date of the passage of said act shall, within sixty days after the passage of the same, file with the Commissioner of Health certified copies of plans and surveys of their water works, and a description of the source from which the supply of water is derived, and no additional source of supply may thereafter be used by them without a written permit from the said commissioner. From and after said date no water works may be constructed for the supply of water to the public without first obtaining a permit therefor from the Commissioner of Health in the manner provided in said act.

1759. Classes of Water Companies.

The laws of Pennsylvania provide for the incorporation of three classes of water companies.

1. Corporations for "the supply of water to the public," corporation of which is authorized by the ninth paragraph second section of the Act of April 9, 1874.

2. Corporations for "the supply, storage or transportation of water and water-power for manufacturing and commercial purposes," the incorporation of which is authorized by the ninth paragraph of Sec. 2 of the Act of April 29, 1874, as amended by the Act of May 16, A. D. 1889, P. L., 226.

3. Corporations for "the storage, transportation and distribution of water for manufacturing and other purposes, and the erection, establishing, furnishing, transmission and use of water-power therefrom," the incorporation of which is authorized by Par. 18, of Sec. 2 of the Act of April 29, 1874, and the supplements thereto. See Sec. 1039 *et seq.*

The purposes enumerated in paragraphs one and two, are distinct and may not be united in one application.¹

The first two classes of water companies are of a purely local character and the applications for charters therefor must close the district or locality in which they are to operate.

The operations of water companies of the third class, however, are not confined solely to the district wherein the business of the corporation is to be transacted. It is sufficient that an application for a charter for such a company set out where the water and water-power are to be furnished and the place where the business of the corporation is to be transacted.²

This chapter treats only of corporations formed for the supply of water to the public or the supply, storage or transportation of water and water power for commercial and manufacturing purposes. For the law relating to companies for the storage and transportation and furnishing of water for manufacturing and other purposes and for the furnishing, transmission and using of water-power therefrom, see Sec. 1039 and the sections following.

1760. The Incorporation of Water Companies Authorized.

Corporations may be formed under the provisions of the Act of April 9, 1874, for . . . IX. The supply of water to the public.

(1) *Sowego Water & Power Co.*, 4 D. R., 181 (1895); 16 P. R., 179.

(2) *In re Portland Water & Power Company*, Op. Atty. Gen., 13 D. R., 659 (1904); 29 Pa. C. C., 180.

lic, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes.³

1761. Statements of Purpose in Charter.

For companies for the supply of water to the public: Supplying water to the public in [statement of town, borough, city or district wherein water is to be supplied. See Sec. 1787] and to such persons, partnerships or corporations residing therein as may desire the same.

Statement of purpose for a company for the supply, storage or transportation of water, etc.: The supply, storage or transportation of water and water power for commercial and manufacturing purposes in [statement of territory. See Sec. 1787].

1762. Applications for Charters to Be First Submitted to and Approved by the Water Supply Commission of Pennsylvania.

From and after the passage of this act, no application for a charter for a corporation for the supply of water for the public, or for the supply, storage, and transportation of water and water-power for commercial and manufacturing purposes, or for any other water or water-power company, shall be approved by the Governor, nor shall letters patent be issued thereon, unless said application is first submitted to, and has received the approval of, a majority of the members of the Water Supply Commission of Pennsylvania; nor unless said application shall contain, in addition to the statements now required to be made, the name of the river, stream, or other body of water, from which it is proposed to take or use water or water-power, and, as near as may be, the points on said river, stream, or other body of water, between which said water or water-power is proposed to be taken or used.⁴

1763. Method of Applying for Charters Under the Provisions of the Act of June 7, 1907, P. L. 255.

Application for charters should be made to the Governor on the same blank and in the same form used prior to the passage of said act. The published form of notice of application should begin: "Notice is hereby given that an application will be made to the

(3) Sec. 1, Act April 29, 1874, P. L., 73, and Sec. 1, Act May 16, 1889, P. L., 226, amending Sec. 2, Act April 29, 1874, P. L., 75.

(4) Sec. 1, Act June 7, 1907, P. L., 455. See Sec. 1805.

Governor and the Water Supply Commission of Pennsylvania, etc.; otherwise to be in the usual form.

The application should be filed in the office of the Secretary of the Commonwealth, accompanied by the proper fees and proof of publication of notice. A duplicate of the application should be filed with the Water Supply Commission.

Applicants are required to furnish said commission with maps and plans in sufficient detail to show the source of water and its application and a written description of the same; authentic data as to the character and volume of the water used, the proposed method of storing and distributing or using the same, and such other information as the commission may deem necessary for an intelligent disposition of the application. Such maps and papers should be verified by affidavit and accompany the application.

All applicants for charters are required to state the water sheds which they own or control, and the character of the land covered.

Applications for charters of water companies, under the Act of April 29, 1874, as amended by Act of May 16, 1889, P. L. 1889, must state where the companies are located, and into what boroughs, cities or districts they propose, respectively, to produce water. The mere statement of a certain locality or territory within which it proposes to appropriate water from a stream is not sufficient.^{4*}

Where an application was made for a charter for a water company to furnish water to territory covered by an existing franchise, on the ground that the exclusive privileges of the first formed company never vested, the charter was refused. The Secretary of the Commonwealth holding that his department would not inquire into alleged forfeitures of failures to comply with the act in the absence of a record establishing the fact.⁵

1764. Protests Against Granting Charters.

A protest against the granting of a charter to a water company should be filed in duplicate with the Water Supply Commission as soon after the first publication of notice as is practicable.

(4*) *Perkiomen Water Storage, etc., Co., Op. Sec. Com., 13 Pa. D. 124 (1893).*

(5) *Monongahela Water Co. v. Southside Water Co., 15 Pa. C.*

The protest should briefly set forth the ground of opposition and the interest of the protestants; and must be specific, giving the full and correct name of the company against the application of which it is filed, and designate the date when the application is advertised to be made. A day for hearing will then be appointed at which time all parties will be heard by counsel or in person.

1765. Government of Water Companies.

Companies incorporated under the provisions of this statute for the supply of water to the public, or for the manufacture and supply of light, heat and fuel, or any of them, by any process of manufacture, shall, unless otherwise provided by this act, from the date of the letters patent creating the same, have the powers and be managed, governed and controlled as hereinafter provided.⁶

1766. Powers of Water Companies.

Where such companies shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to provide, erect and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city or district where they may be located a sufficient supply of pure water, or water and water power as aforesaid, and for that purpose may provide, erect and maintain all proper buildings, cisterns, reservoirs, pipes and conduits for the reception and conveyance of water, or water power, and it shall have power to appropriate so much of the water from the rivers, creeks, canal water-rights and easements, within or without the limits of the city, borough or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered and paid as provided for in the forty-first section of the act to which this is a supplement; and it is further authorized and empowered itself, its agents, engineers and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads, and highways and bridges, as may be necessary to occupy or to obtain ma-

(6) Sec. 1, Act June 2, 1887, P. L., 310, amending the first paragraph Sec. 34, of the Act of April 29, 1874, P. L., 93.

materials for the construction of said works, and to occupy, lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads and other highways and impairing the free use thereof as far as possible, and subject to such regulations as the council of any borough, town, city or district may adopt in regard to the same for the protection and convenience of public travel over the same, and if any injury be done to private property the said corporation shall make compensation therefor in the manner provided in the forty-first section of this act: *Provided*, That this act shall not apply to private spring or private water supplies.⁷

1767. Further Powers, Continued—May Mortgage Their

Corporations heretofore or hereafter incorporated under the authority of assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, one thousand eight hundred and seventy-four, and amendments thereto, for the supply, storage or transportation of water and water power for commercial and manufacturing purposes, be and the same are hereby authorized and empowered to determine the character, design and construction of the works for the use to be made of the water and water power of such corporations, in order that the same may be supplied to the public at the best advantage, and by themselves, their agents, engineers or workmen, cause to be located, constructed, maintained, operated and operated under the law and supplements to which may be further supplement, the said works and all machinery, buildings, cisterns, races, canals, waterways, reservoirs

(7) Sec. 2, Act May 16, 1889, P. L., 226, amending Clause 2, Sec. 1, Act April 29, 1874, P. L., 73. It seems that this act confers upon water companies the right of eminent domain, and under it to take, when necessary, land cannot be made with the owner thereof, land necessary for the construction and operation of their work, and that such land may be taken with or without the district which they have been chartered to supply water. *Keller v. Riverton Water Co.*, 161 Pa., 422 (1894). Water companies may take corporate as well as private property under the provisions of the act of 1889. *Independent Nat. Gas Co. v. Butler Water Co.*, 210 Pa., 111 (1904). For a discussion of what constitutes a "private spring" or "private water supply," see *Gring v. Sinking Spring Water Co.*, 7 Pa. Super. Ct., 111 (1901). Companies formed under this act for the storing and transportation of water and water, etc., do not have an exclusive franchise. *Township Water Co. v. Pennypacker*, Governor, 6 Dau. Co. Rep., 8 (1891).

conduits, lines, plants, apparatus, fixtures and appliances deemed necessary, requisite and proper for said purposes, and it shall and may be lawful for such corporations from time to time to contract with any individual or corporation of this or any other State for the construction, operation, use and maintenance of their works or any part thereof as aforesaid, and to mortgage their said property, real, personal and mixed, and franchises to any person or corporation of this State or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of such water and water power company to be performed, including the guaranty of the payment of the bonds and interest thereon of any other corporation, party to such contract, and the stock in any company incorporated for the purposes named in this act may be owned and held by corporations of this or other States of the United States.⁸

1768. Exclusive Privileges—Must Furnish Pure Water.

The right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until the said corporation shall have from its earnings realized and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock: ¹⁰ *Provided*, That the said corporation shall

(8) Act of July 2, 1895, P. L., 432. An examination of the Act of July 2, 1895, shows that the authority and powers granted by the act are confined to companies incorporated for "the supply, storage, or transportation of water and water power for commercial and manufacturing purposes," and that it does not extend the territorial limits in which such companies may exercise their rights and privileges, and does not apply to or confer any powers on companies incorporated for the supply of water to the public. *Bly v. White Deer Mountain Water Co.*, 197 Pa., 80 (1900).

(9) See Sec. 1786.

(10) Clause 3, Sec. 34, Act April 29, 1874, P. L., 94. This clause was amended by Act of June 2, 1887, P. L., 310, and Act of June 24, 1895, P. L., 267, so as to give exclusive privileges only to corporations formed for the manufacture of gas to supply light only to the public. Water companies formed subsequently to the passage of the Act of June 2, 1887, P. L., 310, therefore, do not have exclusive privileges; those formed prior to that date do have such privileges, under the provisions of the above clause, now repealed, as above stated.

at all times furnish pure water, and any citizen of the same may make complaint of impurity or deficiency in quantity or both, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of.¹¹

The jurisdiction conferred by the foregoing proviso is for the protection of the public interests and to ensure the performance of a public duty, and not intended to supersede the jurisdiction of law courts in cases of damages growing out of contracts between water companies and private individuals. Hence a court of equity has no jurisdiction under it to assess damages against a water company for loss sustained by lack of water during a stoppage down of the company's pump.¹²

1769. Requirements as to Pure Water Made Applicable to Water Companies.

The provisions of the third clause of section thirty-three of the act, approved April twenty-ninth, Anno Domini one thousand eight hundred and seventy-four, entitled "An act to provide for the incorporation and regulation of certain corporations," as amended, reads as follows: *Provided*, That the said corporations shall at all times furnish pure gas and water, and any citizen using the same may make complaint of impurity or deficiency in quantity, to the Court of Common Pleas of the proper county, by bill filed, and after hearing the parties touching the same, the said court shall have power to make such order in the premises as may seem just and equitable, and may dismiss the complaints or compel the corporation to correct the evil complained of," be and the same is hereby extended and made applicable to all gas and water companies incorporated under any of the laws of this Commonwealth.

All proceedings authorized by said proviso shall be in accordance with the rules of equity practice now existing: *Provided*, That all lawful fees and costs accruing in such proceedings shall be paid by the party complaining.

(11) Act of June 24, 1895, P. L., 267, amending Act June 2, 1888, P. L., 310, which amended Clause 3, of Sec. 34, of the Act of April 29, 1874, P. L., 94. This provision does not refer to municipal corporations furnishing water to their citizens. *Harlacher v. Steelton Boro.*, 32 Pa. C. 281 (1906). See Sec. 1791.

(12) *Brace v. Penna. Water Co.*, 24 Pa. Super. Ct., 249 (1904).

be taxed and allowed as provided by the equity fee bill in the respective court and paid by the unsuccessful party.

Either party may appeal to the Supreme Court as in cases in equity.¹³

The remedies for the furnishing of impure water provided by the Act of June 24, 1895, P. L., 267, and that of June 10, 1881, P. L., 112, are not exclusive of the right of the Commonwealth to proceed by quo warranto against a water company furnishing impure water to the public for the forfeiture of its charter.¹⁴

A judgment of ouster will be sustained when the evidence of the Commonwealth tends to show that defendant's line was connected with a mill pond which received the sewage of the town, and that during five years at times of low water, and when fires occurred, water from the pond was pumped into the main service lines of the company, rendering it unwholesome and unfit for drinking or cooking or even washing.¹⁵

770. Taking of Lands—Eminent Domain.¹⁶

Before any such water company shall proceed to occupy any land or enclosure, or to obtain and use any material therefrom, for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act: *Provided*, that companies organized for any of the purposes set forth in the eighteenth clause of the second section of this act, whether such companies shall have been organized under any special act of assembly or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough or city with water, shall have all the rights, privileges and powers conferred by the said eighteenth clause, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act.¹⁷

(13) Act of June 10, 1881, P. L., 112.

(14) Com. ex rel. v. Potter County Water Co., 212 Pa., 463 (1905).

(15) Com. ex rel. v. Potter County Water Co., 212 Pa., 463 (1905).

(16) See Secs. 481, 1771.

(17) Act June 12, 1879, P. L., 177, amending Clause 4, Sec. 34, Act April 29, 1874, P. L., 94.

**1771. Streams, Rivers and Waters, and the Lands Covered
Not to Be Appropriated Under the Right of Em-
main.**

No water company, hereafter incorporated under any laws, shall have powers or exercise the right of eminent domain in re- spects the appropriation of the streams, rivers or waters of the Commonwealth, or any of them, nor the land covered by them.

1772. Penalty for Taking Gas or Water Without Authority.

If any person or persons shall open a communication for water or gas main or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either shall have been ordered by order of said inspector or authorized agent of said company for repairs or any other cause or purpose, or shall put up any pipes or burners, in addition to those originally put up and inspected, and introduce into them water and gas, as they may be, without authority as aforesaid, he, she or they shall be liable to a penalty of not less than ten, nor more than one hundred dollars, recoverable before any alderman or justice of the peace of the proper county, as debts of like amount are by law recoverable, one-half to be paid to the informer, and one-half to the company.

1773. Punishment for Injuring Works of the Corporation.

If any person shall wilfully or maliciously do or cause to be done, any act or acts whatever, whereby any building, structure, reservoir or works of said company, or any water or gas post, burner or reflector, or any matter or thing attached to the same shall be stopped or obstructed, injured, covered or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and may therefor be indicted by the Court of Quarter Sessions of the proper county, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court: *Provided*, That such criminal punishment shall not in any way impair the right of said company to compensation in damages by civil suit.²⁰

(18) Act April 13, 1905, P. L., 152. See Sec. 1814

(19) Clause 5, Sec. 34, Act April 29, 1874, P. L., 94.

(20) Clause 6, Sec. 34, Act April 29, 1874, P. L., 94.

1774. Purchase of Works by Municipalities.

It shall be lawful at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city or district into which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon, at the rate of ten per centum per annum, deducting from said interest all dividends theretofore declared. *Provided*, That nothing in this section contained shall authorize a company incorporated under the provisions of this act to construct gas or water works within the limits of any municipality, when gas or water works shall have been constructed by said municipality, without the lawful consent of the corporate authorities thereof: *And provided further*, That the Court of Common Pleas of the proper county shall have jurisdiction and power upon the bill or petition of any citizen using the gas or water of any of said companies, to hear, inquire and determine as to the charges thereof for gas or water so furnished, and to decree that the said bill be dismissed, or that the charges shall be decreased, as to the said court may seem just and equitable, and to enforce obedience to their decrees by the usual process.²¹

A water company does not exhaust its right to condemn land by single exercise of the right of eminent domain, but may subsequently acquire such additional land as its purposes may require, and where such land is adjacent to the company's plant well defined and obviously adaptable to the uses of the company its condemnation need not be preceded by a preliminary entry and experimental survey, showing topography, grades, etc.^{21*}

1775. Reconstruction of Public Roads Overflowed by Water Companies.

Whenever any water company incorporated for the purpose of supplying water to the public shall have found, or shall find it necessary in storing water to occupy and flow with water portion of any turnpike or any public road in this Commonwealth, the said company shall cause the same to be reconstructed forthwith,

(21) Clause 7, Sec. 34, Act April 29, 1874, P. L., 95. See Sec. 1792.

(21*) *Keller v. Riverton Water Co.*, 34 Pa., Super. Ct., 301, (1907).

at their own proper expense, on a favorable location proved by the Court of Quarter Sessions of the proper county in as perfect a manner as the original road, and are authorized to condemn land for that purpose whenever an agreement cannot be had with the owners.²²

The location selected by a water company whereon to construct the road or turnpike will be approved by the court upon the averments of the petition of the water company, such approval not being an adjudication which can prejudice the rights of the townships in which the road is located. Except in townships to the petition will not be considered by the court.

1776. Water Companies May Purchase or Condemn Lands Necessary to Preserve Water Supply From Contamination.

Any such water company shall be and is hereby authorized to acquire and hold by purchase, or condemnation, lands along and contiguous to streams of water, or reservoirs, in which water is taken for public use, as may be necessary to serve them from contamination: *Provided*, That no lands shall be taken for the uses mentioned in this act until just compensation shall have been made for the property taken, injured or destroyed, which shall be paid or secured before such taking, in the following instruction: *And provided further*, That any owner of lands along said streams shall have the use of the water for farming and domestic purposes, with free ingress and egress at all times to said streams.²⁴

1777. Ascertainment of Damages for Lands Taken in the Construction of Public Roads.

The damage incurred in changing the location of any private or public road as authorized by the first section of this act, or in acquiring lands to preserve water supply from contamination as authorized by the second section of this act, shall be ascertained and paid by such water company in the same manner as is provided for in regard to the taking of lands, waters, materials, property and franchises, for the public purposes of such water company, and no lands, property or franchises, shall be taken

(22) Sec. 1, Act May 26, 1893, P. L., 158.

(23) Washington County Public Road, 11 D. R., 595 (1902).

(24) Sec. 2, Act May 26, 1893, P. L., 158. See Sec. 1779.

uses mentioned in this act until just compensation shall have been paid or secured therefor.²⁵

1778. Amount of Capital Stock Which Water Companies May Have.

Under the provisions of the Act of May 9, 1889, P. L., 181, water companies were not permitted to have a capital stock in excess of two million dollars. By the prior Act of May 25, 1887, P. L., 269, which was probably unconstitutional as special legislation, water companies supplying cities of the first and second class might increase their capital stock to an amount not exceeding twenty million dollars. Sec. 2 of the Act of May 3, 1899, P. L., 190, now permits any corporation to increase its capital stock to any necessary amount. See Sec. 243.

1779. Lands Heretofore Acquired by Water Companies to Preserve Their Water Supply From Contamination May Be Held in Fee.

Whenever any water company incorporated for the purpose of supplying water to the public shall have heretofore acquired any lands in this Commonwealth, by purchase or by lease, along or contiguous to streams of water or reservoirs from which water is taken for public use that may be necessary to preserve the water supply of such water company from contamination, the said company shall hold the said lands to them, their successors and assigns in fee simple, or for the term for which the said lands may have been granted or leased to them, subject, however, to any reservation, limitation or condition under or upon which such lands may have been conveyed or leased.²⁶

1780. Water Power Companies May Supply Electric Power and Current to the Public.

Corporations organized, or hereafter to be organized under the laws of this State for the purpose of supplying water power to the public, and other corporations owning or controlling water power, may develop electric power for commercial purposes by means of water power, and shall have authority to supply current and power to the public, individuals, firms and corporations at

(25) Sec. 3, Act May 26, 1893, P. L., 158.

(26) Act June 18, 1895, P. L., 195. See Sec. 1776.

such prices as may be agreed upon, and shall have authority to make, erect and maintain the necessary buildings, machinery and apparatus for developing power and current, and to distribute the same to any place or places with the right to enter upon any public road, street, lane, alley or highway for such purposes, to alter, inspect and repair its system of distribution: *And* That no such company shall enter upon any street or alley in any city, borough or township of this Commonwealth, until the consent to such entry of the councils of the city or borough or supervisors of the township in which such street or alley is located shall have been obtained.²⁷

The statement of purpose of a water supply company shall include therein the words "with the right to generate electricity and rent and supply the same at any place or places," which shall state a purpose, but a power conferred by the Act of July 2, 1895, *supra*.²⁸

1781.—Acceptance of Act of April 29, 1874, by Water Companies Incorporated Under Special Acts.

Where a water company incorporated under a special act prior to April 29, 1874, purchases the water works of a borough or township under an act authorizing such purchase and sale, which act contains the provision that it shall not charge any private family more than ten cents per annum, such company cannot subsequently relieve itself of the limitation on such charges by accepting the Constitution of 1872, the Act of April 29, 1874.²⁹

1782. Extension of Territory of Water Companies.

Any company heretofore incorporated or hereafter to be incorporated for the purpose of supplying water to the inhabitants of any town, borough or city, may, upon the written request of the owners of a majority of the lots of land in any tract or district adjacent to such town, borough or city, have power and authority to extend its plant or works for the supply of water into such tract or district, with such rights and subject to such duties with

(27) Act July 2, 1895, P. L., 425.

(28) *Providence Hydro-Electric Co.*, 29 Pa. C. C., 467 (1904).

(29) *White Haven Borough v. White Haven Water Co.*, 20 Pa. C. C., 1 (1904).

tract or districts as may have been conferred and imposed by its charter, within the town, borough or city therein designated: *Provided*, That such written request shall contain a description of such tract or district, and be recorded in the office of the recorder of deeds in and for the proper county, and thereupon a certified copy of the record of such proceedings as appears of record in the office of the recorder of deeds shall forthwith be transmitted to and filed in the office of the Secretary of the Commonwealth.³⁰

1783. Boroughs May Provide Water Supply for the Use of the Public, or Contract With Water Companies to Furnish the Same.

Every borough of this Commonwealth shall have power and authority to provide a supply of water for the use of the public within such borough, either by erecting and operating water works or by entering into a contract or contracts with one or more persons or corporations authorized to supply water within the limits of said borough, or partly by the erection and operation of water works and partly by entering into a contract or contracts, as aforesaid.³¹

No contract for the supply of water, entered into by any borough with any person, persons or corporations, shall in any wise affect or abridge the power of said borough to construct and operate water works as hereinbefore provided, but such power shall remain in full force and effect as though such contract had not been made.

All acts or parts of acts inconsistent herewith are hereby repealed.³²

The foregoing second section of the Act of May 3, 1901, P. L., 140, is unconstitutional inasmuch as the title of the act gives no notice of the provision contained in said section.³³

1784. Borough Councils May Contract With Water Companies for a Supply of Water for Fire Protection.

Councils of boroughs within this Commonwealth are hereby authorized and empowered to receive bids from any and all in-

(30) Act May 21, 1901, P. L., 270.

(31) Sec. 1, Act May 3, 1901, P. L., 140.

(32) Secs. 2 and 3, Act May 3, 1901, P. L., 140.

(33) Potter County Water Co. v. Austin Borough, 206 Pa., 297 (1903).

corporated water companies, authorized to do business with a municipality, for a supply of water for fire protection and other municipal purposes, and to contract therefor with any company offering terms which to said council shall seem most advantageous to said borough.³⁴

1785. Canal Companies May Supply Water for Domestic, Manufacturing and Commercial Purposes.

Any person, corporate or otherwise, vested with the right of constructing, maintaining and using, for purposes of navigation, canals or other artificial highways, may, at any time, divert a portion or the whole of the water supply therefrom for such highways to the uses of domestic manufacturing and commercial purposes, and may to this end, from time to time, lease, sell or convey the whole or any portion of the same.

1786. Exclusive Privileges.³⁵

The Act of June 2, 1887, Sec. 3, P. L., 310, amending Sec. 34 of the Act of April 29, 1874, repeals by implication the exclusive privileges given to water companies by said act, and the grant by a municipality to a water company, inasmuch as, since the passage of said act, of the mere right to enter the streets and lay pipes cannot be construed to confer any exclusive right to the streets, so as to prevent the municipality from afterwards constructing its own water system.³⁶

It seems, however, that said act takes away the exclusive privileges of water companies as to other water companies, but not as to municipalities, and where a water company incorporated by special Act of March 10, 1865, accepted on September 1, 1874, the provisions of the entire Constitution and those of the Act of April 29, 1874, it thereby lost the exclusive powers granted in its charter, but gained the exclusive privilege given to water companies.

(34) Act May 2, 1901, P. L., 137.

(35) Act May 17, 1901, P. L., 261.

(36) See Sec. 1768.

(37) *Luzerne Water Co. v. Toby Creek Water Co.*, 148 Pa., 178 (1899); *Centre Hall Water Co. v. Centre Hall Borough*, 186 Pa., 74 (1901); *Porterstown Water Co. v. Boyertown Boro.*, 200 Pa., 394 (1901); *Grantham Water Co. v. Hastings Borough*, 216 Pa., 178 (1906); *Grantham Water Co. v. Pennypacker, Governor*, 6 Dau. Co. 81 (1903).

(38) *Hastings Water Co. v. Hastings Borough*, 216 Pa., 178 (1906).

panies by Cl. 3, Sec. 34 of the Act of 1874, at the same time being amenable to clause seven of the same section, providing for the purchase of water company plants, and, where such company had a contract, express or implied with a borough to furnish water for fire protection, the borough may not erect a water works of its own.³⁹

A water company to which letters patent were issued in March, 1887, but which did not record its charter in the county in which its chief operations were to be carried on until May 3, 1888, acquired no exclusive franchise, since its corporate existence did not begin until the date of recording said charter, which was after the passage of the Act of June 2, 1887, P. L., 310, amending the Act of 1874 so as to deprive water companies incorporated under it of exclusive franchises.⁴⁰

In computing the dividends of a water company to ascertain whether it has lost its exclusive franchise through realizing and dividing eight per cent. or more per annum for five years, the capital stock is to be taken at the amount paid-in, neglecting increases of capital made from earnings. It is immaterial whether earnings are paid in cash or in stock. Where the dividends in cash and stock have been for five years equal or in excess of eight per cent. of the amount of capital stock actually paid in by the stockholders, the exclusive franchise is lost, and a charter may be granted to another company to operate in the same territory.⁴¹

It seems that the exclusive privilege granted by the Act of April 29, 1874, to water companies does not exist as against individuals who have, under authority of the municipal authorities, the right to lay pipes in the streets of a municipality and supply its inhabitants with water.⁴²

1787. Territory Throughout Which Water Companies May Supply Water.

The Act of 1874 provides that water companies incorporated

(39) *Tyrone Gas & Water Co. v. Borough of Tyrone*, 195 Pa., 566 (1900).

(40) *Braddock Borough v. Penn Water Co. et al.*, 189 Pa., 379 (1899); *See Armstrong Water Co. v. Rayburn Water Co.*, 24 Pa. C. C., 13 (1900); 9 D. R., 94.

(41) *Philipsburg Water Co. v. Citizens' Water Co.*, 18 Pa. C. C., 625 (1897); *Op. Sec. Com.*; same title, 189 Pa., 23 (1899); *Philipsburg Water Co. v. Philipsburg Borough*, 203 Pa., 562 (1902).

(42) *Freeport Water Works Co. v. Prager*, 129 Pa., 605 (1889).

under its provisions shall have the power to supply water in any town, borough, city or district where they may be located. The language clearly and expressly limits the authority of a water company to the municipal or quasi municipal division in which they are located. It can exercise its corporate functions in only one territorial division, and that division is "where it may be located." The word "district" used in the act, having no qualifying adjective to indicate its extent or meaning, is not to be construed as extending the territorial limits in which the corporation may supply water beyond those given it by the prior words used in the connection. It may embrace a township or a part of one of the political divisions mentioned immediately preceding it, but not two or more of them.⁴³

Neither the power of eminent domain granted by the Act of 1874, nor any other provision of that act, nor of the Acts of 1876, 1889, and July 2, 1895, gives to water companies the power to supply water in territory adjacent to the municipal or quasi municipal division in which they are located, and a provision in the certificate of incorporation, granting power to supply water in adjacent territory is wholly inoperative, and such certificate should not be approved by the Governor.⁴⁴

A water company having no power to supply water in territory, it has no authority to condemn and appropriate lands for such purposes, and if it attempt to do so, a landowner threatened with injury has a standing under the Act of 1871, P. L., 1361, in equity, for an injunction to restrain the act.⁴⁵

It seems, however, that the fact that a water company has a few consumers outside of its charter limits does not prevent such company from taking lands under its right of eminent domain for increasing its supply of water within the charter limits. Otherwise, if a portion of the increased supply is to be used outside of the charter limits.⁴⁶

(43) *Bly v. White Deer Mountain Water Co.*, 197 Pa., 80 (1900), Sec. 1228.

(44) *Bly v. White Deer Mountain Water Co.*, 197 Pa., 80 (1900); *City of New Castle Water Co. v. West New Castle Water Co.*, 18 Pa. 498 (1896); *Armstrong Water Co. v. Rayburn Water Co.*, 24 Pa. 13 (1900). See *In re Granite Water Co.*, 30 W. N. C., 417 (1892); *Eastern Spring Water Co.*, 9 D. R., 546 (1900), Op. Sec. Com.

(45) *Bly v. White Deer Mountain Water Co.*, 197 Pa., 80 (1900).

(46) *Detwiler v. Citizens' Water Co.*, 25 Pa. C. C., 481 (1901).

The decisions cited led to the passage of the Act of May 21, 1901, P. L., 270,⁴⁷ which provides for the extension of the plants of water companies to tracts or districts adjacent to their charter territory.

1788. Right of Boroughs and Municipalities to Erect Water Works.⁴⁸

It was originally held that there was no restriction by contract placed on the right of a municipality to erect water works, the right of the municipality being entirely independent of the right of private corporations to erect similar works, and that it was no bar to such municipal right that such erection would injure franchises of the same character,⁴⁹ but this position has been abandoned, and it is now held as follows:—

Where a water company has been organized under the Act of April 29, 1874, to supply a city with water, and the city has contracted with the company and permitted it to lay its pipes, the power having been once exercised to supply the city by contract through another creature of the same sovereign, the municipal function has passed from the city and it cannot subsequently erect and maintain water works to supply its citizens with water in the manner contemplated by the Act of May 23, 1874, P. L., 230.⁵⁰

The charter of a borough is not a contract within the constitutional inhibition of impairing the obligation of contracts. *Erie City v. Erie Canal Co.*, 59 Pa., 174; *Philadelphia v. Fox*, 64 Pa., 169. The Legislature had the power to take away the right of a borough to construct water works and to confer it upon another. The General Borough Law, under which a borough was incorporated, empowered it, *inter alia*, "to provide a supply of water for the use of its inhabitants." Subsequently to the incorporation of the borough a water company was incorporated, by special act, with exclusive authority to supply water. Held, that the successor to such company, having bought the franchises at

(47) See Sec. 1782.

(48) See Sec. 1783.

(49) *Millvale Borough. Howard's Appeal*, 162 Pa., 374 (1894).

(50) *White et al. v. City of Meadville*, 177 Pa., 643 (1896). In this case, the case of *Lehigh Water Co.'s Appeal*, 102 Pa., 515 (1883), is distinguished, the Borough of Easton having, in that case, the express right to construct or purchase water works, conferred by special acts passed prior to 1874, which right, it was held, was not taken away by the Act of April 29, 1874.

sheriff's sale, had the exclusive right to furnish water to the borough, which right was not affected by its acceptance of a contract of the Constitution.⁵¹

Where a water company has been organized under the Act of May 23, 1874, to supply a borough with water, and the borough has entered into a contract with the company, and permitted the company to lay its pipes, the borough cannot subsequently erect and maintain its own water works to supply its citizens with water, as provided by the Act of May 23, 1874, P. L., 261. If the borough desires to change the method of supplying its citizens with water, it must first obtain power, after twenty years, to purchase the works in the manner provided by law.⁵²

Where a borough has been enjoined from building municipal water works because, by a contract with a private corporation, it has exhausted its municipal power to introduce water, it cannot be permitted to accomplish in an indirect way what it is prohibited from doing power to do directly, and therefore it cannot subsequently enter into a contract with another private corporation to supply the borough with water for fire and other purposes, to supply the borough with water at rates designated in the contract, and to erect a plant to the borough at a price not exceeding the cost of the same.⁵³

A borough which has, by legislative authority, exercised its municipal function to supply itself with water through the ownership of stock and participation in the management of a water corporation, cannot, by selling its stock and divesting itself of such management, acquire the right to make a contract with another corporation to supply the borough with water.⁵⁴

In order to prevent a municipality from constructing municipal water works of its own, there must have been a contract made between the municipality and a water company for the supply of water. Where there is no such contract, the fact that a water company has supplied the borough or municipality with water will not prevent the

(51) *Gas & Water Co. of Downingtown v. Downingtown Borough*, 188 Pa., 341 (1896).

(52) *Metzger v. Beaver Falls Borough*, 178 Pa., 1 (1896); *Rochester Borough*, 180 Pa., 509 (1897); *Potter County Water Co. v. Austin Borough*, 206 Pa., 297 (1903).

(53) *Welsh v. Beaver Falls Boro.*, 186 Pa., 578 (1898).

(54) *Carlisle Gas & Water Co. et al. v. Carlisle Water Co.*, 181 Pa., 51 (1898); 182 Pa., 17 (1897).

from constructing its own works. A water company incorporated without exclusive privileges prior to the Act of April 29, 1874, which has supplied water to the residents of a town prior and subsequent to its incorporation as a borough, but which has never had any contract with the borough and has never been induced by any action of the borough to extend its pipes or expend money upon its plant, is not entitled to an injunction to restrain the borough from establishing and maintaining water works of its own.⁵⁵

Where a water company was required, under its charter, to furnish water free to a borough, for the extinguishment of fire, the acceptance of such water by the borough does not forfeit the borough's right to provide a supply of water for the use of its inhabitants.⁵⁶

A water company will not be deemed to have rescinded its contract to supply a borough with water from the fact that it offered to enter into a new contract upon the same terms as the original one, except as to the price, which was not accepted.⁵⁷

Where a borough by agreement with a water company for the supply of water has exhausted its power to establish a water supply of its own, it has no power to establish such a supply because the company failed to properly perform its contract. Its remedy is by proper proceedings to compel the company to furnish an adequate supply.⁵⁸

An Act of 1873 which authorized a borough to erect water works and borrow money, merely declared what the borough had a right to do by accepting the provisions of the General Borough Act of April 3, 1851, viz.: either to construct water works of its own or contract with a water company for a supply of water, and if such borough contracted with a company for such supply, it may not afterwards claim a right, under said special Act of 1873, to establish water works of its own.⁵⁹

In determining the amount of damages for injuries sustained by a water company, through the erection of water works by a borough, the jury may take into consideration the amount of

- (55) *Centre Hall Water Co. v. Centre Hall Borough*, 186 Pa., 74 (1898).
- (56) *Boyertown Water Co. v. Boyertown Borough*, 200 Pa., 394 (1901).
- (57) *Ephrata Water Co. v. Ephrata Borough*, 24 Pa. Super. Ct., 353 (1904).
- (58) *Troy Water Co. v. Troy Borough*, 200 Pa., 453 (1901).
- (59) *Nelson v. Warren Boro.; Warren Water Co. v. Warren Boro.*, 200 Pa., 504 (1901).

water rents collected by the borough, less the amount which have cost the water company to supply the quantity of water which rents were charged.⁶⁰

In an action by a water company to recover damages for injuries sustained through the erection of water works by a borough, the borough may not set up as a defense the impurities of the water furnished by the company, and evidence that the company had neglected to extend its mains to all parts of the borough is inadmissible, where there is no offer to show that the borough requested such extension.⁶¹

1789. Appropriation of Water.

The Act of April 29, 1874, did not, originally, confer upon corporations formed for the purpose of supplying water to the public the right to appropriate waters and streams,⁶² though the power was probably exercised in many cases under the general authority contained in the forty-first section of the Act of April 29, 1874, there being in said section, however, no suggestion that the Act applied to companies formed to supply the public with water.

Sec. 2 of the Act of May 16, 1889, P. L., 226, amending Sec. 34 of the Act of April 29, 1874, however, supplies the deficiency and confers upon companies incorporated for the purpose of supplying water to the public, or for storing and transportation of water to the public, or for storing and transportation of water for the supply of water and water power for commercial and manufacturing purposes the right to appropriate so much water from streams, creeks, etc., as may be necessary for their purposes. See Acts of 1766 and 1770. This power, however, is taken away from corporations formed after April 13, 1905, by the act approved April 13, 1905, P. L., 152. See Sec. 1771.

Corporations organized under the eighteenth clause of the second section of the Act of April 29, 1874, for the storage and transportation and furnishing of water were specifically given the right to take rivulets by said section, and under the provisions of the Act of June 12, 1879, P. L., 177, amending Cl. 4 of Sec. 18 of the Act of April 29, 1874, P. L., 94, the right of such companies to take lands, waters or rivulets is to be exercised in the manner

(60) *Bennett Water Co. v. Millvale Boro.*, 200 Pa., 613 (1901).

(61) *Bennett Water Co. v. Millvale Boro.*, 202 Pa., 616 (1902).

(62) *Edgewood Water Co. v. Troy Water Co.*, 7 Pa. C. C., 476.

vided in the forty-first section of said Act of 1874. See Sec. 1770. The right of such companies formed after April 13, 1905, to appropriate waters, is evidently taken away by the act of that date, P. L., 152. See Sec. 1771.

When a water company has not condemned a stream, or any portion of it, from which it draws water, its rights with reference to a subsequently organized company which draws water from the same stream at a higher point, are those of a lower riparian owner only.⁶³

Incorporated water companies, incorporated under the Act of April 29, 1874, as amended by the Act of May 16, 1889, P. L., 226, having power to appropriate "so much of the water from rivers . . . canal water rights . . . as may be necessary for their purposes" may not undertake to appropriate not only the water but the rivers, canals, etc. Where a company attempted to acquire the entire real estate, property and franchises of a canal company, held, that the said Act of 1889 gave no such right, and that one corporation cannot condemn the property of another unless the right is conferred by express grant or necessary implication, and that such implication arises only from a necessity so absolute that without it the grant will be defeated.⁶⁴

A water company may not discontinue its proceedings in eminent domain, when it has taken the land and given a bond which has been accepted. There has then been a permanent taking of the land and water.⁶⁵

The approval of a bond in condemnation proceedings is not conclusive of the right of the company filing the same to condemn the property in question. It decides the amount of the bond only and the sufficiency of the sureties.⁶⁶

Where a water company tenders a bond in a proceeding to condemn waters of another company, and it does not appear from the record that such company has no right to condemn the waters in question, and the court dismisses the proceeding without passing

(63) *Philipsburg Water Co. v. Citizens' Water Co.*, 189 Pa., 23 (1898); 43 W. N. C., 291.

(64) *Phila. Water Supply Co. v. Susquehanna Canal Co.*, 4 D. R., 637 (1895).

(65) *Weatherly Water Co.'s Petition*, 21 Pa. C. C., 330 (1898); 7 D. R., 361.

(66) *Getz v. Phila. & R. R. R. Co.*, 1 Walker, 427; *Katharine Water Co.*, 32 Pa. Super. Ct., 94 (1906).

upon the sufficiency of the bond, the order will be reversed and the case remitted to have the sufficiency of the bond passed.

A corporation has no power to take by eminent domain in Pennsylvania which naturally flows into Maryland and damages therefor under Pennsylvania laws to Maryland riparian owners.⁶⁸

In ascertaining the amount of damages sustained by a riparian owner, a lower riparian owner, occasioned by the appropriation of the water of a stream, the average condition of the stream over a number of years is the proper basis, and not its condition in an extremely dry season. Where an insufficient bond is offered, the court will order it filed, and enter a rule on the company to show cause why it should not be increased to an amount to be fixed by the court after hearing.⁶⁹

A water company was by special act authorized from time to time to permanently appropriate such springs and streams as it might elect. In 1858 it diverted an inconsiderable portion of the flow of a certain stream. In 1865 it transferred all its rights to the City of Reading. Later, the dam upon said stream was raised so that a large portion of the flow in ordinary seasons of water, and the whole, in seasons of drought, was diverted and permanently appropriated by the city. In a proceeding for appointment of a jury to assess damages, held (a) that the appropriation of 1858 did not vest the right to the entire stream in the water company, so as to make the rights of riparian owners and damages lapse after six years from that date: (b) the rights of the company were not exhausted by one appropriation; (c) the rights to damages of such owners accrued at the time of each appropriation respectively.⁷⁰

The Act of April 29, 1874, Sec. 34, authorizing water companies incorporated under its provisions to appropriate and use the water of a stream, however, contemplates a single appropriation and one assessment of damages. Where a company permanently appropriates, as appears by the pleadings, an entire stream, the court held that evidence on the part of such company that enough

(67) *Katharine Water Co.*, 32 Pa. Super. Ct., 94 (1906).

(68) *Octoraro Water Co.'s Petition*, 15 D. R., 767 (1906).

(69) *Philipsburg Water Co. v. Citizens' Water Co.*, 189 Pa., 23 (1904), 43 W. N. C., 291.

(70) *Schepp v. Reading*, 2 Penny., 460 (1872).

remained unused by the company to supply all the purposes of the plaintiff was immaterial.⁷¹

An act provided that a corporation might permanently appropriate to its use such springs or streams as it might select, for water purposes, on compensation being made to the owners for damages sustained. Held, that said act applied not only to the owners of natural channels, but to those who owned artificial water courses which had been used from time immemorial.⁷²

But a water company will not be enjoined at the suit of a prior company from taking water from a stream which said prior company has never condemned but has simply taken water from it, where it appears that the stream furnishes twenty times the water supplied by the prior company.⁷³

Where water is taken by a water company, under right of eminent domain, and mill owners on the stream below are deprived of water, the true measure of damages is the depreciation in value of the mill property as affected by the taking: how much less was it worth to the owner or *bona fide* purchaser after the appropriation of the water daily pumped out of the stream than when the flow was undisturbed. The damages are not to be assessed upon what might be, but what really is, the loss to the mill owners through the withdrawal of the water supply.⁷⁴

In cases of appropriation of water the measure of damages is, the difference in value of the whole property before and after the appropriation of the stream. The rule is, to inquire what would the entire property have sold for when unaffected by the appropriation, and what would it sell for when it was so affected. The difference is the true measure of compensation. The jury must consider the question of damages without reference to the person of the owner, or the actual state of profits of his business, but they may consider the use to which the property may be put, and, by reason of its location or use, it may be worth more when used for a given purpose than if used for other purposes, its market value is governed accordingly.⁷⁵

When the charter of a water company, incorporated prior to

(71) *Miller v. Windsor Water Co.*, 148 Pa., 429 (1892).

(72) *Reading v. Althouse*, 93 Pa., 400 (1880).

(73) *Philipsburg Water Co. v. Citizens' Water Co.*, 189 Pa., 23 (1899); W. N. C., 291.

(74) *Lee et al. v. Springfield Water Co.*, 176 Pa., 223 (1896).

(75) *Miller v. Windsor Water Co.*, 148 Pa., 429 (1892).

1874, provided that if, in the construction of its works, and should be done to private property, compensation should be made, and injury was done to such property, and the franchises and property of the company were sold before compensation was made, it was held that the purchaser at judicial sale, another water company, took subject to the claim for such compensation.⁷⁶

A water company will not be enjoined from appropriating waters without making or securing compensation to riparian owners, where it appears that the company has appropriated such waters, that there was no evidence showing it contemplated taking the same without compensation and security, but that a resolution of the board of directors was intended to proceed according to law.⁷⁷

Where a corporation clothed with the right of eminent domain takes the water of a stream for its corporate purposes, not by exercise of the right of eminent domain, but by virtue of its rights as a riparian owner, it has no other or higher right in the water than an ordinary riparian owner, and it matters not what needs of its business for the water are.⁷⁸

The right which a railroad company has acquired in a stream by a lease from a riparian owner, and not by the exercise of the right of eminent domain, is no greater than the right of the owner himself.⁷⁹

A water company which has purchased lands upon which there is a spring of water, may not divert the stream flowing from the spring from its accustomed course without proceeding to exercise the right of eminent domain, as provided in the Act of 1874, compensating the lower riparian owners on said stream for the losses incurred by the diversion of its waters.⁸⁰

The title to a spring within the right of way of a water company is in the owner of the fee, who has the right to the whole of the water, to conduct it by pipe wherever he chooses.

(76) *Lycoming Gas and Water Co. v. Moyer*, 11 W. N. C., 407, 99 Pa., 615.

(77) *Hey v. Springfield Water Co.*, 207 Pa., 38 (1903).

(78) *Phila. & Reading R. Co. v. Pottsville Water Co.*, 18 Pa. 222 (1897).

(79) *Phila. & Reading R. Co. v. Pottsville Water Co.*, 18 Pa. 222 (1897).

(80) *Lord v. Meadville Water Co.*, 135 Pa., 122 (1890).

consume it, sell it or waste it. The turnpike company has no easement in the spring.⁸¹

Where water has been appropriated for a public purpose by a water company, the right of the landowner to begin proceedings by a petition for viewers under Sec. 41 of the Act of April 29, 1874, does not depend either upon the filing of a bond by the water company, or the making of a specific appropriation of a definite quantity of water which the company intended to use.⁸²

As a water company has no right to supply water in territory adjacent to the place in which it is located, it may not condemn and appropriate waters for such purposes, and, if it attempts to do so, a landowner threatened with injury has a standing under the Act of 1871, in equity, for an injunction to restrain such act.⁸³

1790. Rates of Water Companies.

A system of charges by a water company that yields no more income than is fairly required to maintain the plant, pay fixed charges and operating expenses, provide a suitable sinking fund for the payment of debts and pay a fair profit to the owners of the property cannot be said to be unreasonable, and will be sustained by the courts.⁸⁴

The supervisory power over water companies conferred upon the courts by Acts of April 29, 1874, P. L., 95, and June 2, 1887, P. L., 311, does not justify a court in preparing a tariff of water rents, and commanding a corporation to furnish water at the rates so fixed, as this would amount to a transfer of the management of the property and business of a solvent corporation from its owners to a court of equity. The court may decrease rates when exorbitant, but not fix a schedule thereof in the first instance. It is the duty of the company, in the first place, to prepare a schedule of rates, and if a customer is aggrieved thereby he may petition the court and have the rates decreased, if improper.⁸⁵

The rates and charges of water companies incorporated prior

(81) Upper Ten Mile Pl. Rd. Co. v. Braden, 172 Pa., 460 (1896).

(82) Bowers v. Citizens' Water Co., 162 Pa., 9 (1894).

(83) Bly v. White Deer Mountain Water Co., 197 Pa., 80 (1900). See *Terling's Appeal*, 111 Pa., 35 (1886), and Sec. 1782.

(84) Brymer v. Butler Water Co., 179 Pa., 231 (1897).

(85) Brymer v. Butler Water Co., 179 Pa., 231 (1897).

to the Act of April 29, 1874, but which have accepted the provisions of that act, cannot be regulated by the municipal authorities. The regulation of such rates and charges is within the exclusive jurisdiction of the Courts of Common Pleas, under the second proviso of Cl. 7, Sec. 3, of the Act of 1874. There is nothing in the forty-sixth section of article five of the Act of May 23, 1889, P. L., 777, known as "The General Welfare Clause," which gives cities of the third class authority to regulate the rates and charges of water companies.⁸⁶

An announcement by a water company that a discount on certain sales will be made if payment for such sales is made on or before a given date, and penalties will be exacted for delayed payments, such rule being obviously applicable to private consumers, will not be construed as applying to a prior contract with a municipality for hydrants and fire plugs rented by it.⁸⁷

1791. Where the Water Supplied Is Impure.*

The furnishing of water to the public is a public use, and where the water supply of a water company is polluted by the emptying into it of large quantities of salt water, resulting from oil operations, the Commonwealth may proceed in equity in the name of the Commonwealth, at the relation of the Attorney General, for the loss sustained by the public. The case of *Penna. Coal Company v. Sanderson*, 113 Pa., 126, which held that an individual had no remedy against an upper riparian owner who polluted a stream through the development of the resources of the lands of such owner without malice, does not apply to the case of a public corporation, like a water company.⁸⁸

A water company incorporated under the Act of April 29, 1874, will be enjoined from collecting water rents where the company has supplied water unfit for domestic use or for steam purposes. Such a company is not bound to supply water which is chemically pure, but such as is ordinarily and reasonably pure. After securing a proper source of supply the company must exer-

(86) *Schroeder v. Scranton Gas and Water Co.*, 20 Pa. Super. Ct., 255 (1902).

(87) *Mt. Holly Water Co. v. Mt. Holly Springs Borough*, 10 Pa. Super. Ct., 162 (1899).

(88) See Secs., 1768, 1769.

(89) *Com. v. Russell et al.*, 172 Pa., 506 (1896).

cise diligence to preserve the water from pollution, and to deliver it to the public in no worse condition than that in which it is taken from the source of supply. Where the source of supply is polluted by upper riparian owners pouring salt water from oil wells into the stream, rendering the water unfit for use, the court may decree that the company shall not collect water rents, but cannot decree that the company must obtain its supply from some other designated point. The company has the option of going out of business or seeking some new and independent source of supply.⁹⁰

In a proceeding in quo warranto by the Commonwealth against a water company to forfeit its charter for not furnishing pure water, the jury found by a special verdict that the water was "wholesome but not pure." Held, that this was a sufficient compliance with the Act of 1874. That portion of said act which gives to a citizen using the water furnished by a company a remedy, does not take from the Commonwealth the right of proceeding against such company by quo warranto.⁹¹

The Act of April 29, 1874, Sec. 34, Cl. 3, by which Courts of Common Pleas are authorized on a bill filed by any citizen using the water furnished by a water company, alleging impurity or deficiency in supply, to compel the water company to correct the evil, applies to cases of contract as well as to water rights acquired by eminent domain, and a borough which is a consumer of water may proceed as any private citizen may do.⁹²

1792. Purchase of Plants of Water Companies After Twenty Years.*

Water companies in cities of the third class may not be compelled to sell their plants to the cities in which they operate at the price stipulated in Cl. 7, of Sec. 34, of the Act of April 29, 1874, viz.: the net cost of erecting and maintaining the same, with interest thereon at the rate of ten per cent., deducting therefrom all dividends theretofore declared, inasmuch as Sec. 1, of Art. 12 of the Act of May 23, 1889, P. L., 308, providing for the

(90) *Brymer v. Butler Water Co.*, 172 Pa., 489 (1896).

(91) *Com. ex rel. v. Towanda Water Works*, 1 Mona., 500 (1888); 22 W. N. C., 429. See *Brace Bros. v. Pa. Water Co.*, 7 D. R., 71 (1897).

(92) *Du Bois Borough v. Du Bois City Water Works Co.*, 176 Pa., 430 (1896).

(93) See Sec. 1774.

incorporation of cities of the third class, enacts that such cities may purchase the property of water, gas or electric light companies for such sum as may be agreed upon between councils and a majority of the stockholders. The Act of 1889 does not, however, apply to corporations formed before that year, and such corporations may be required to sell at the rate fixed in the Act of 1874.⁹⁴

1793. Contracts of Water Companies.

A contract between a borough and a water company provided that water for the borough supply should be drawn only from certain designated land. It subsequently appeared that there was not sufficient water on such land to supply the borough. Held, that the failure of the company to supply the borough with a sufficient supply of water, arising as it did from a common mistake of the parties, was not sufficient to justify a court of equity in cancelling the contract, and, further, that the borough could not, under such circumstances, rescind the contract by ordinance. The borough is liable for the water actually used though it fall short of the contract supply.⁹⁵

Where a contract between a water company and a borough provided that the company should, at the expiration of one year from date, have its water pipes laid and the fire plugs supplied with water, failure to perform at the specified time is excusable where it appears that the fire plugs were to be located in such places as the authorities of the borough should designate within three months from the date of the agreement, and that it was not until one year and a half afterwards, that such designation was made and the company then promptly laid its pipes.⁹⁶

Where a company has entered into a contract with a borough to supply the latter with water, the contract cannot be deemed to have been rescinded from the bare fact that it offered to enter into a new contract, upon the same terms as the old, except as to price, which offer was not accepted.⁹⁷

(94) *White v. Meadville City*, 177 Pa., 643 (1896).

(95) *Du Bois Borough v. Du Bois City Water Works Co.*, 176 Pa., 430 (1896).

(96) *Ephrata Water Co. v. Ephrata Borough*, 20 Pa. Super. Ct., 149 (1902).

(97) *Ephrata Water Co. v. Ephrata Borough*, 20 Pa. Super. Ct., 149 (1902).

Where a water company contracting to furnish water to a municipality gratuitously, reserving to itself the right to discontinue supplying the same, exercises such right, and the city continues to use the water with notice that it will be expected to pay therefor, it will be liable for the water used.⁹⁸

1794. Water Companies May Not Relocate Their Mains.

Water companies which have once exercised the right of eminent domain in the location of pipe lines will be enjoined from laying out over the same lands an entirely new and additional route for supplying themselves with water, no matter how convenient or necessary the same may be. They may enlarge their pipes but not relocate them.⁹⁹

1795. Building of Dams.¹⁰⁰

It is not *ultra vires* for a water company to build a dam and lease it to an ice company for a term of years.¹

A charter for the supply, storage and transportation of water and water power for commercial and manufacturing purposes does not confer the power to build dams within the Susquehanna River. It seems, however, that such company may dam said river so long as it does not obstruct the running of fish. The Act of March 31, 1785, makes the Susquehanna River a public highway. The Act of March 23, 1803, 4 Sm. 20, permits riparian owners on streams declared public highways—except the Delaware, Lehigh and Schuylkill—to erect dams, providing they do not impede navigation nor prevent fish from passing. The Act of April 28, 1873, P. L., 890, Sec. 11, provides that all persons building dams in rivers accessible to migratory fish, shall put in fish-ways or ladders.²

1796. Stockholders as Members of City Councils Voting on Contracts With a Water Company.

Although a stockholder and secretary of a water company, who is also a member of a borough council, is disqualified from

(98) Spring Brook Water Co. v. Pittston, 203 Pa., 223 (1902).

(99) McKay v. Penna. Water Co., 6 D. R., 364 (1897).

(100) See Sec. 1808.

(1) Schaaber's Appeal, 2 Mona., 435 (1889).

(2) Sowego Water & Power Co., Op. Sec. Com., 16 Pa. C. C., 179 (1895).

voting on an ordinance for the supply of water to the borough by his company, yet the ordinance itself is not rendered invalid by such vote, if it appear that the contract is legitimate and a majority of the members of the council, not counting the said member, voted in favor of the ordinance. "In the Milford Borough case (*Milford v. Milford Water Company*, 124 Pa., 610) referred to, the ordinance in question was passed by a majority of members who were also directors of the water company. . . . In the Trainer case (*Trainer v. Wolfe*, 140 Pa., 279) . . . the deciding vote was cast by a member who had an interest in the land, the purchase of which was the subject of the pending resolution." ³

1797. Property of Water Companies Subject to Be Taken in the Exercise of the Right of Eminent Domain.

Land appropriated by a water company for a reservoir may be condemned for road purposes, under the conditions fixed by law.⁴

1798. Municipal Regulation of Water Companies.

Corporations formed for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, incorporated under the provisions of Par. IX, Sec. 2, Act of April 29, 1874, as amended by Act of May 16, 1889, (see Sec. 1766), do not have to obtain municipal consent to construct and operate in a municipality or township. The said Act of 1889 gives them the right to enter upon and occupy such lands, streets, lanes and highways as may be necessary "subject to such regulations in regard to streets, roads, lanes and other highways and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said town, borough, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same."⁵

(3) *Marshall v. Ellwood City Borough et al.*, 189 Pa., 348 (1899). See, *Contra*, *Kennett Elec. Lt. Co. v. Kennett Square Boro.*, 4 D. R., 707 (1895).

(4) *Road in Herrick & Ararat Townships*, 16 Pa. Super. Ct., 579 (1901).

(5) *Springfield Township v. North Springfield Water Co.*, 29 Pa. C. C., 614 (1904); *Springfield Water Co. v. Darby Borough*, 199 Pa., 400 (1901). *Contra*, *Lehigh-Coplay Water Co. v. Coplay Borough et al.*, 11 D. R., 602 (1901).

In making regulations the municipality is confined to the matters entrusted to it by the Act of 1889, and in the exercise of its police power it may not legislate and impose conditions which have no connection with the protection and safety of the highways. Thus, a township of the first class may not require a water company to establish free fire plugs in consideration of the right to construct its lines on the roads of the township.⁶ Water companies are, however, subject to the reasonable directions of the township authorities.⁷

But water companies are subject to the payment of reasonable fees for permits to open streets to enable them to reach their mains for purposes of repair.⁸

A municipality may by the construction of a viaduct to do away with a dangerous grade crossing make it necessary for a water company to alter the location of its pipes, in which case it is not liable for the expense incurred by the company.⁹ And where a water company whose main is laid in a public road, which was subsequently annexed to a borough, is compelled to lower its main to the changed grade of the road as a borough street, it must do so at its own expense.¹⁰

A railroad company may construct pipe lines for the purpose of supplying itself with water upon lands which it owns in fee within the limits of a city of the third class, so long as it does not interfere with the streets and highways of the municipality, and procure water for such purpose from a water company chartered to supply water to the public in a township adjoining said city, notwithstanding the fact that said city supplies water to the public from its own water plant.¹¹

(6) *Springfield Township v. North Springfield Water Co.*, 29 Pa. C. C., 614 (1904).

(7) *Bryn Mawr Water Co. v. Lower Merion Township*, 4 D. R., 157 (1894).

(8) *Beaver Valley Water Co. v. Conway Borough*, 213 Pa., 225 (1905); *Lansdowne Borough v. Springfield Water Co.*, 16 Pa. Super. Ct., 490 (1901); *Springfield Water Co. v. Darby Borough*, 199 Pa., 400 (1901); *Springfield Township v. North Springfield Water Co.*, 29 Pa. C. C., 614 (1904).

(9) *Scranton Gas & Water Co. v. Scranton*, 214 Pa., 586 (1906).

(10) *Change of Grade of Kerlin St.*, 12 D. R., 764 (1903).

(11) *Harrisburg v. Amer. Pipe Manufacturing Co.*, *Dau. Consol. Water Supply, & Penna. R. R. Co.*, 33 Pa. C. C., 641; 10 *Dau. Co. Rep.*, 146 (1907). This case seems to overlook the fact that the water companies

1798a. Purchase of Stock of One Water Company by Another.

Where a water company continues to faithfully perform its duties, its charter cannot be forfeited because a majority of the stockholders sold their stock to an individual who purchased and paid for it with his own money and subsequently assigned the stock to another water company. A corporation which acquires a majority of the stock of another corporation does not acquire the property and franchises of the latter. The transfer of a majority of the stock is not a transfer of the property of the company.¹²

1799. Water Companies Public Corporations.

Water companies are public corporations, and their buildings, machinery, etc., necessary for the carrying on of their operations are not subject to mechanics' liens.¹³

1800. Voluntary Privileges Not Necessarily Irrevocable.

The privilege, voluntarily conceded by a water company, to a municipality to use certain fire-plugs gratuitously in case of fire is not necessarily irrevocable, especially where the water company reserved the right to change their rules governing the use of water at any time.¹⁴

1801. Railroad Companies May Acquire and Hold Stock and Securities of Water Companies.

In order to enable railroad companies of this Commonwealth to secure an adequate supply of water for their necessary corporate purposes, they are hereby authorized, from time to time, to acquire, own and hold, pledge, sell or otherwise dispose of, the stock, bonds and other securities, or either, and to guarantee the stock, bonds and other securities, or either, of water companies.¹⁵

supplying the water to the railroad company had no right under their charters to appropriate or take water to be used outside of their charter limits whether so used by them directly or by others. *Bly v. White Deer Mountain Water Supply Co.*, 197 Pa., 80 (1900).

(12) *Com. v. Punxsutawney Water Co.*, 197 Pa., 569 (1901).

(13) *Foster & Co. v. Fowler & Co.*, 60 Pa., 27 (1868); *Guest v. Merion Water Co.*, 142 Pa., 610 (1891).

(14) *Carlisle Borough v. Carlisle Gas & Water Co.*, 18 W. N. C., 59 (1886).

(15) Act April 22, 1905, P. L., 264.

**1802. Water Supply Commission of Pennsylvania Constituted—
Membership.**

There is hereby created the Water Supply Commission of Pennsylvania, to consist of five members, three of whom shall, within thirty days after the passage of this act, be appointed by the Governor, by and with the consent of the Senate, to serve for four years from the time of their appointment, and the two remaining members of the commission shall be the Commissioner of Forestry and the Commissioner of Health, to be called and known as the Water Supply Commission of Pennsylvania.¹⁶

The members of the commission shall, before entering upon the discharge of their duties, take and subscribe to the oath of office provided by the Constitution, and file the same in the office of the Secretary of the Commonwealth. All vacancies occurring in the commission shall be filled by appointment of the Governor, for four years.¹⁷

1803. Duties of Commission.

Immediately after the appointment and qualification of the members of the commission, they shall proceed to organize by electing a chairman and secretary. It shall be the duty of the commission to procure, as speedily as may be, all the data and facts necessary to advise them thoroughly of the situation of the water supply of the State, and adopt such ways and means of utilizing, conserving, purifying and distributing such water supplies in such a way that the various communities of the State shall be fairly and equitably dealt with in such distribution: *Provided, however,* That the local distribution of water within the limits of an incorporated village, town or city is not to fall within the jurisdiction of this commission.^{17*}

1804. Appointment of Engineer.

It shall be the further duty of the commissioners, that they are hereby authorized to appoint a competent engineer, at a salary of two thousand five hundred dollars per annum, and a competent clerk, who shall also be a stenographer, at a salary of one thou-

(16) Sec. 1, Act May 4, 1905, P. L., 385.

(17) Sec. 2, Act May 4, 1905, P. L., 385.

(17*) Sec. 3, Act May 4, 1905, P. L., 385.

sand two hundred dollars per annum, to assist them in their labors.¹⁸

1805. Applications for Charter of Corporations for Supply of Water to the Public to Be Approved by Commission.

Hereafter no letters patent shall be issued to any company desiring to be incorporated for the purpose of supplying water to the public, in any community in the Commonwealth, until said application is first submitted to and has received the approval of a majority of the said Water Supply Commission.¹⁹

1806. Salary of Members of Commission.

Each member of the Commission shall receive a salary of three thousand dollars per annum, which shall be paid quarterly, by a warrant drawn by the Auditor General upon the State Treasurer, out of moneys not otherwise appropriated, except the Commissioner of Forestry and the Commissioner of Health, who shall serve without salary, but shall be allowed necessary expenses.²⁰

1807. Commission to Collect Information as to Water Supply of the State.

It shall be the further duty of the said commission to collect such information relative to the existing conditions of the water supply of the State, and to make an annual report to the Governor and the Legislature, based upon such investigation, recommending such further legislation as in its opinion is necessary for the conservation, development, purification, equitable distribution, and supply of the waters of the State, and in particular to such communities as are now greatly in need of extended facilities for this purpose.²¹

1808. Dams, Etc., Not to Be Constructed in Public Streams Without Consent of Water Supply Commission.

From and after the passage of this act, no person or persons, corporation, county, city, borough or township shall construct, erect or build, in or along any public or navigable river, or stream heretofore declared a public highway, within this Com-

(18) Sec. 4, Act May 4, 1905, P. L., 385.

(19) Sec. 5, Act May 4, 1905, P. L., 385. See Sec. 1762.

(20) Sec. 6, Act May 4, 1905, P. L., 385.

(21) Sec. 7, Act May 4, 1905, P. L., 385.

monwealth, any dam, wall, wing wall, wharf, pier, embankment, abutment, projection or other obstruction of such river or stream, nor make any addition to any existing dam, wall, wing-wall, wharf, pier, embankment, abutment, projection, or other obstruction of any such river or stream, nor in any manner change or diminish the course, current or cross section of any such river or stream, unless and until the said person or persons, corporation, county, city, borough or township shall have submitted to the Water Supply Commission of Pennsylvania complete maps, plans, profiles, and specifications of, and such other information and data as the said Water Supply Commission of Pennsylvania may deem necessary relating to, the proposed dam, wall, wing-wall, wharf, pier, embankment, abutment, projection, or other obstruction, or addition thereto, and a majority of the members of the said Water Supply Commission of Pennsylvania shall have approved the same: *Provided, however,* That the provisions of this act shall not prohibit the making of necessary temporary repairs to existing dams, walls, wing-walls, wharves, piers, abutments, or projections.²²

1809. Water Companies Obtaining Any Part of Their Supply Within the Limits of Any Municipality to Furnish Such Municipality and its Inhabitants With Water.

From and after the passage of this act, any water company obtaining its water-supply, or any part thereof, from a source lying within the corporate limits of any municipality, city, borough, or township, in this Commonwealth, shall furnish such municipality and the inhabitants thereof with water, or otherwise forfeit its rights to a sufficient quantity of water, from such source, as will supply the needs of such municipality, city, borough, or township, and the inhabitants thereof.²³

1810. Penalty for Failure to Supply—Proceedings by Municipality—Water Company to File Report With Water Supply Commission—Penalty for Failure to File Report.

Should any water company fail to furnish water to any municipality, city, borough, or township, or the inhabitants thereof, under the conditions described in section one of this act, it shall be the

(22) Act May 28, 1907, P. L., 299. See Sec. 1795.

(23) Sec. 1, Act May 28, 1907, P. L., 278.

duty of the city or borough council, the commissioners or supervisors of the township, as the case may be, to pass a resolution setting forth the fact that the municipality and the inhabitants thereof are not being served with water, and that they desire the same; a copy of which resolution shall be served on the president, secretary, or attorney of the water company having its source of supply within the corporate limits of the municipality thus affected; whereupon it shall be the duty of such water company to prepare a statement, setting forth in full its reasons for its failure to supply water to the affected district; which statement must also include any plans in contemplation, if there be any, to supply water at some future time to such district, stating when such supply may be expected; which statement must be verified by oath or affirmation by the president or secretary of such water company, and filed with the State Water Supply Commission, at Harrisburg, within thirty days from the date of service of the original notice on such water company by the municipality affected.

Failure on the part of the president or secretary of such water company to file a statement, as above directed, shall be deemed a misdemeanor on their part, and, upon conviction thereof, they shall be sentenced to undergo an imprisonment not exceeding six months, and pay a fine not exceeding one thousand dollars, or either or both, at the discretion of the court.²⁴

1811. Water Supply Commission May Recommend Incorporation of Water Companies Agreeing to Furnish Municipalities With Water Which May Condemn and Appropriate Waters —Municipalities May Condemn and Appropriate Waters.

If, in the judgment of the State Water Supply Commission, the reasons filed are of such character as to indicate that no relief will be given the municipality complaining, in the way of a water-supply, within a reasonable time, then said State Water Supply Commission may recommend to the Governor that letters patent be issued and a charter granted to any association of individuals who may legally form a water company, and who may apply for the same, and who will agree, in their application for a charter, to supply water to the municipality, city, borough, or township thus affected, and the inhabitants thereof, and for that purpose to have the right to condemn, take, or appropriate a sufficient quantity of

(24) Sec. 2, Act May 28, 1907, P. L., 278.

water, from any source of supply lying within the corporate limits of any municipality, city, borough, or township thus affected, as is adequate to supply the needs of such municipality, city, borough, or township, and the inhabitants thereof: *Provided, however,* That any municipality, where conditions prevail such as are described in sections one and two of this act, shall have the right, with the consent and approval of the State Water Supply Commission, to condemn, take, or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality or municipalities affected, as is adequate to meet the needs of such municipality or municipalities, and the inhabitants thereof, and no damages shall be collected by, or allowed to, any water company for any water appropriated under the provisions of this act.²⁵

1812. Mergers and Consolidations of Water Companies Not to Be Approved by Governor Unless First Approved by the Water Supply Commission.

From and after the passage of this act, no agreement for the merger and consolidation of two or more corporations heretofore or hereafter formed for the supply of water to the public, or for the supply, storage, and transportation of water and water-power for commercial and manufacturing purposes, or of any other water or water-power companies, shall be approved by the Governor, nor shall letters patent be issued creating and erecting the parties to said agreement into a new corporation, unless said agreement is first submitted to, and has received the approval of, a majority of the members of The Water Supply Commission of Pennsylvania; nor unless said agreement shall designate the river, stream, or other body of water, from which it is proposed to take or use water or water-power thereafter, and also, as near as may be, the points on said river, stream, or other body of water, between which said water or water-power is proposed to be taken or used; nor unless said agreement shall stipulate that the right heretofore existing in any of the corporations, parties to said agreement, to take or use water or water-power from any river, stream, or other body of water, or portions thereof not so designated, shall be and are thereby forfeited and surrendered, and shall revert to this Commonwealth: *Provided, however,* That no such agreement of mer-

(25) Sec. 2, Act May 28, 1907, P. L., 278.

ger and consolidation shall be approved by the said Water Supply Commission of Pennsylvania, nor by the Governor, until each of the corporations, parties thereto, shall have filed in the office of The Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April thirteenth, one thousand nine hundred and five, entitled "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," agreeing to be subject to and bound by the provisions of both said acts, with like effect as if said corporations had been formed subsequently to the passage of both of said acts; and shall, also, have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth.²⁶

1813. Sales and Conveyances of the Property and Franchises of Water Companies Not to Be Valid Unless Approved by the Water Supply Commission—Procedure.

From and after the passage of this act, no sale, assignment, disposition, transfer, and conveyance of the franchises, and all the property, real, personal, and mixed, of any corporation heretofore or hereafter formed for the supply of water to the public, or for the supply, storage, and transportation of water and water-power for commercial and manufacturing purposes, or of any other water or water-power company, to any other such corporation, shall be valid until a certificate, authorized by a majority of the stockholders of the corporation so purchasing, and duly executed by the president and secretary thereof, under the seal of said corporation, designating the river, stream, or other body of water, and, as near as may be the points on the said river, stream or other body of water between which it is proposed to take or use water or water-power thereafter, and stipulating that the right heretofore existing in either the corporation so purchasing or the corporations so selling to take or use water or water-power from any river, stream or other body of water, or portions thereof, not so designated, shall be and are thereby forfeited and surrendered and shall revert to this Commonwealth, shall have been approved by a majority of

(26) Sec. 2, Act June 7, 1907, P. L., 455.

the members of The Water Supply Commission of Pennsylvania and filed in the office of the Secretary of the Commonwealth: *Provided, however*, That no such certificate shall be approved by the said Water Supply Commission of Pennsylvania until the corporation so purchasing shall have filed in the office of the Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April thirteenth, one thousand nine hundred and five, entitled "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporation had been formed subsequently to the passage of both of said acts, and shall have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth.²⁷

1814. Proceedings to Obtain New or Additional Sources of Supply of Water by Companies Formed Subsequent to June 7, 1907, or Subject to the Provisions of the Act Approved on That Date.

Any corporation: For the supply of water to the public; or, for the supply, storage, and transportation of water and water-power for commercial and manufacturing purposes; or, any other water or water-power companies, formed or created subsequently to the passage of this act, or subject to its provisions, requiring a new or additional source of supply for its water or water-power, may make application therefor by filing in the office of the Secretary of the Commonwealth a certified copy of a resolution of its stockholders, under the seal of said corporation—a duplicate of which shall also be filed in the office of The Water Supply Commission of Pennsylvania—setting forth the necessity for such new or additional source of supply, and the river, stream, or other body of water, and, as near as may be, the points on said river, stream, or other body of water, between which it is desired to take or use water or water-power; and if the application shall be approved by a majority of the members of The Water Supply Commission of Pennsylvania, it shall then be pro-

(27) Sec. 3, Act June 7, 1907, P. L., 455.

duced to the Governor, for his approval or disapproval; and if he shall approve the same, the Secretary of the Commonwealth shall issue a certificate that such new or additional source of supply has been duly authorized; and the said certificate shall then be recorded in the office of the Secretary of the Commonwealth, and in the office for the recording of deeds in and for the county in which said river, stream, or other body of water, or the portion thereof so authorized to be used, is situated, and shall thenceforth be deemed and taken to be a part of the charter or instrument on which said corporation was formed or created, to all intents or purposes as if the same had originally been a part thereof: *Provided*, That the rights or privileges granted under or by the provisions of this act shall in no wise prevent or prejudice the occupation of such source of supply of water by the State, for the purpose of promoting any system of inland navigation: *And provided, further*, That nothing in this act shall be construed to relieve any water company from complying with the requirements of the Act of April twenty-second, one thousand nine hundred and five, entitled "An act to protect the purity of the waters of the State, for the protection of the public health."²⁸

1815. Water Companies Not to Occupy Streets in Townships of the First Class Without Consent Obtained by Ordinance.

No water company, gas company, or electric light company shall enter upon or occupy, in any manner whatever, any street or highway within any township of the first class of this Commonwealth, without first making application, in writing, to the proper authorities of such township of the first class, and obtaining its consent or permission, which shall be given by ordinance only, and upon such conditions, stipulations, and regulations as the municipal authorities may deem proper.²⁹

1816. Corporations for Supplying Water to the Public to File Plans and Surveys With the Commissioner of Health—Additional Sources of Supply Not to Be Hereafter Used Without a Permit.

Every municipal corporation, private corporation, company and individual supplying or authorized to supply water to the public, within the State, shall, within sixty days after the passage of

(28) Sec. 4, Act June 7, 1907, P. L., 455.

(29) Act June 6, 1907, P. L., 417.

this act, file with the Commissioner of Health a certified copy of the plans and surveys of the waterworks, with a description of the source from which the supply of water is derived; and no additional source of supply shall thereafter be used, without a written permit from the Commissioner of Health, as hereinafter provided.³⁰

1817. Water Works for the Supply of Water to the Public Not to Be Constructed or Extended Without a Permit From the Commissioner of Health.

No municipal corporation, private corporation, company, or individual shall construct waterworks for the supply of water to the public within the State, or extend the same, without a written permit, to be obtained from the Commissioner of Health if, in his judgment, the proposed source of supply appears to be not prejudicial to the public health. The application for such permit must be accompanied by a certified copy of the plans and surveys for such waterworks, or extension thereof, with a description of the source from which it is proposed to derive the supply; and no additional source of supply shall subsequently be used for any such waterworks without a similar permit from the Commissioner of Health. When application shall be made for a permit, under either of the above provisions of this section, it shall be the duty of the commissioner to proceed to examine the application, without delay, and, as soon as possible, he shall make a decision, in writing; and, within thirty days after such decision, the corporation, company, or individual making such application may appeal to any Court of Common Pleas of the county, and said court shall, without delay, hear the appeal, and shall make an order approving, setting aside, or modifying such decision, or fixing the terms upon which said permit shall be granted. The penalty for failure to file copies of plans, surveys, and descriptions of existing waterworks, within the time hereinbefore fixed, and for the construction or extension of waterworks, or the use of an additional source of supply, without a permit from the Commissioner of Health, shall be five hundred dollars, and further penalty of fifty dollars per day for each day that the works are in operation contrary to the provisions of this act, recoverable by the Commonwealth, at the suit of the Commissioner of Health, as debts of like amount are recoverable by law.³¹

(30) Sec. 2, Act April 22, 1905, P. L., 260.

(31) Sec. 3, Act April 22, 1905, P. L., 260.

CHAPTER LXXVI.

WHARF COMPANIES.

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| 1818. Incorporation Authorized. | 1821. When Wharf Companies |
| 1819. What the Charter Shall | to be Licensed. |
| State. | 1822. Powers of Wharf Compa- |
| 1820. Directors May Contract | nies, |
| for Lands—Eminent Domain. | |

1818. Incorporation Authorized.

Corporations may be formed under the provisions of this act for XXI. The construction and maintenance of a wharf or wharves, for public and private use, and the maintenance of any unincorporated wharf or wharves already constructed.¹

1819. What the Charter Shall State.

The charter of a ferry, wharf or bridge company shall also state:—

I. The stream over or on which the same is proposed to be erected.

II. The place and county or counties of its location.

III. The distance from any other wharf, bridge or ferry over or on the same stream which shall have been before that date incorporated under the laws of this Commonwealth.

IV. All bridges and wharf companies incorporated under this statute, when not otherwise provided in this act, shall, from the date of the letters patent creating the same, be governed, managed and controlled as follows:²

1820. Directors May Contract for Lands—Eminent Domain.

Before the directors of any such corporation shall proceed to build any such bridge or wharf, it shall be lawful for them to contract with the owner or owners of any land for the pur-

(1) Sec. 1, Act April 29, 1874, P. L., 73, and Sec. 1, Act April 17, 1876, P. L., 30, amending Sec. 2, of said Act of 1874.

(2) Sec. 7, Act April 17, 1876, P. L., 34.

chase of so much thereof as shall be necessary for the purpose of erecting and completing said bridge or wharf, and making all the necessary works and causeways to and from the same, if they can agree with the said owner or owners; and whenever any fishing right or other easement is alleged to exist at, upon or about the place where such wharf is about to be erected or constructed, said directors may contract with the owner or owners of such fishing right or easement for settlement of damages to the same, but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act; such bridge shall be so constructed as not to interfere with the free navigation of said creek or river.³

1821. When Wharf Companies to Be Licensed.

No wharf company within the jurisdiction of the board of wardens, for the port of Philadelphia, shall have the right to exercise its corporate franchises under this act until it has been licensed by said board of port wardens, and complied with the provisions of an act, entitled "An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned," approved March twenty-ninth, eighteen hundred and three, and its supplements.⁴

The Board of Wardens of the Port of Philadelphia was abolished by Act of June 8, 1907, P. L., 502. Sec. 10 of the Act of June 8, 1907, P. L. 488, requires persons desiring to construct, extend or alter any wharf to obtain a license from the Director of Wharves, Docks and Ferries.

1822. Powers of Wharf Companies.

. . . . Any wharf company may take and receive such charges for occupancy, storage and use, and such tolls and freights for the passage of persons, vehicles, animals and freight as may be appointed by them, subject to the approval of the Court of Quarter Sessions of the proper county, which court is required to examine the schedule of charges and toll-sheet submitted by any such corporation, and approve the same or lessen or increase the same as seems just and proper.⁵

(3) Sec. 7, Act April 17, 1876, P. L., 34, amending Clause 1, Sec. 31, Act April 29, 1874, P. L., 89. The provision above given is superseded, as to bridge companies, by the Act of May 25, 1887, P. L., 268, but it remains in force as applicable to wharf companies.

(4) Sec. 7, Act April 17, 1876, P. L., 25, amending Clause 6, Sec. 31, Act April 29, 1874.

(5) Sec. 8, Act April 17, 1876, P. L., 36, amending Sec. 32, Act April 29, 1874, P. L., 91.

CHAPTER LXXVII.

YOUNG MEN'S CHRISTIAN ASSOCIATIONS.

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| 1823. Incorporation Authorized
—Powers. | 1828. Officers and Members Not
to be Individually Liable for
Debts of Corporation. |
| 1823a. Charter. | |
| 1824. Notice of Application for
Charter — Certificate — Grant-
ing of Charter. | 1829. Y. M. C. A. Associations
Otherwise Incorporated May
Amend Charters Under This
Act. |
| 1825. Constitution and By-Laws
—Elections. | 1830. General Assembly May Re-
voke or Annul Charters. |
| 1826. Trustees. | |
| 1827. How Property to be Held. | |

1823. Incorporation Authorized—Powers.

From and after the passage of this act any ten or more persons, being citizens and residents within this State and having associated themselves as a Young Men's Christian Association, for the improvement of the spiritual, mental, social and physical condition of young men, by the support and maintenance of lecture rooms, libraries, reading rooms, religious and social meetings, gymnasiums and such other means and services as may conduce to the accomplishment of that object according to the general rules and regulations of the State Young Men's Christian Association of Pennsylvania, a corporation under the laws of the State, may be incorporated under the provisions of this act for the object hereinbefore mentioned, and when so incorporated each of them by virtue of its existence as such, shall have the following powers:

GENERAL POWERS.

First. To have succession by its corporate name perpetually, subject to the power of the general assembly under the Constitution of this Commonwealth.

Second. To maintain and defend judicial proceedings.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To be capable of taking, receiving, purchasing, hold-

ing and transferring real and personal property for the purpose of its incorporation and for no other purpose.

Fifth. To elect, appoint and remove the officers and agents for the management of its business and carrying out its objects and to allow them a suitable compensation.

Sixth. To make a constitution and by-laws for the management of its affairs not inconsistent with the Constitution and laws of the State.

Seventh. To enter into any obligation necessary to the transaction of its affairs.¹

1823a. Charter.

The charter of such intended corporation must be subscribed by five or more persons, citizens of this Commonwealth, and shall set forth:—

First. The name of the corporation.

Second. The purpose for which it is formed.

Third. The place or places where its business is to be transacted.

Fourth. The names and residences of its subscribers:

Fifth. The number and names of its directors, with the term or terms of years for which they have been chosen, and also the names of not less than six trustees who, together with the president of the association, shall form a board of trustees, with the term or terms of years which each is to serve.²

1824. Notice of Application—Certificate—Granting of Charter.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed and the intention to make application therefor.

The said certificates of incorporation shall be acknowledged by at least five of those who subscribed to them, before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instru-

(1) Sec. 1, Act May 9, 1889, P. L., 163.

(2) Sec. 2, Act May 9, 1889, P. L., 163.

ment and if the same shall be found to be in proper form and within the purposes named in this act, he shall endorse thereon these facts and shall order and decree thereon that the charter is approved and that upon the recording of the said charter and order, the subscribers thereto and their associates shall be a corporation for the purposes and upon the terms therein stated, and said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same and their associates and successors shall be a corporation by the name therein given.³

1825. Constitution and By-Laws—Elections.

The constitution and by-laws of every corporation created under this act or having its charter amended under the same, shall be deemed and taken to be its law subordinate to this act, the charter of the same, the Constitution and laws of this Commonwealth and the Constitution of the United States. They shall prescribe the time and place of meeting of the corporation, the time, manner and mode of the election of the directors, and other officers and their powers and duties, with the length of term or terms of office and the number of members necessary to constitute a quorum at any of its meetings of directors, trustees or members, and such other matters as may be pertinent and necessary for the carrying out of its objects.

In case the election of directors shall not be made on the day designated therefor, such association shall not be dissolved, but such election may be held on any other day in such manner as may be directed by the by-laws of such corporation.⁴

1826. Trustees.

Each member of the board of trustees shall be a member of one of the protestant evangelical denominations, but a majority of such members exclusive of the president of the association shall not be members of any one denomination. The several trustees shall hold office for such time as may be prescribed by the charter and when a vacancy occurs in said board of trustees, by expiration of term or otherwise, the same shall be filled by a majority vote of

(3) Sec. 2, Act May 9, 1889, P. L., 163.

(4) Sec. 3, Act May 9, 1889, P. L., 163.

the remaining trustees, from nominations to be made by the board of directors of the corporation.⁵

1827. How Property to Be Held.

The real property of the corporation shall be managed by the board of directors of such corporation, but all real property which shall be given to or acquired by such corporation, and all gifts and bequests of money to be held in trust, shall be held by the board of trustees; but no real property belonging to an association so incorporated shall be conveyed, disposed of or mortgaged by said board of trustees, except with the consent of the board of directors of said corporation. The income which the said board of trustees shall receive from the property under its control and the said property, shall be devoted to the purposes of the corporation and for no other purpose, and so long as the directors of the association shall so expend the same the income of the property so controlled by said board of trustees shall be paid over to the treasurer of the said board of directors.⁶

1828. Officers and Members Not to Be Individually Liable for Debts of Corporation.

The officers and members of corporations created or amending their charters, under the provisions of this act shall not be individually liable for the debts of said corporation.⁷

1829. Y. M. C. Associations Otherwise Incorporated May Amend Charters Under This Act.

Any Young Men's Christian Association incorporated in this State, either under this act or any other general or special act of the general assembly may have its charter improved, amended or altered, under this act as often as it may be desirous of doing so, provided it shall specify the improvements, amendments, or alterations which are, or shall be, desired and exhibit the same to the Court of Common Pleas of the proper county in which said corporation is situated as aforesaid, when, if said court shall be of opinion such alterations are or will be lawful and beneficial and do not conflict with the requirements of this act or of the Consti-

(5) Sec. 4, Act May 9, 1889, P. L., 163.

(6) Sec. 5, Act May 9, 1889, P. L., 163.

(7) Sec. 6, Act May 9, 1889, P. L., 163.

tution, it shall be the duty of said court to direct notice to be given, as directed in the second section of this act of such application and after decree made and such amendments are recorded, the same shall be deemed and taken to be a part of the charter of said corporation.⁸

1830. General Assembly May Revoke or Annul Charters.

The general assembly reserves the power to revoke or annul any charter of incorporation granted or amended under this act whenever in the opinion of the said general assembly it may be injurious to the citizens of this Commonwealth, in such manner however that no injustice shall be done to the corporators or their successors.⁹

(8) Sec. 7, Act May 9, 1889, P. L., 163.

(9) Sec. 8, Act May 9, 1889, P. L., 163.

CHAPTER LXXVIII.

1831. Corporations "For the Transaction of Any Lawful Business Not Otherwise Specifically Provided for by Act of Assembly."

The Act of July 9, 1901, P. L., 624, amends the eighteenth paragraph of the second section of the Act of April 29, 1874, by adding thereto the following words: "and also including companies for the transaction of any lawful business not otherwise specifically provided for by act of assembly: *Provided, however,* That no corporation shall be chartered under this amendment with the authority to transact more than one kind of business, which must be set forth in the charter."

The foregoing provision is much more limited in its application than it might, at first sight, seem to be. It is evident, in the first place, that no corporation with a prerogative franchise can be formed under it. The provision referred to grants the right to be a corporation without more, and this provision not being supplemented by further legislation granting specific powers other than the power of being a corporation, it is evident that corporations requiring the right of eminent domain or similar powers for the carrying on of their respective kinds of business, may not be incorporated under it.

The meaning of the words "lawful business" is limited in an opinion of the Attorney General to businesses recognized at the time of the passage of the act. He, therefore, held that a corporation to operate trackless cars with electric motive power, might not be incorporated under such provision because trackless trolleys were unknown at the time of the passage of the Act of 1901.¹

Another limitation on the formation of corporations under this provision lies in the fact that where the incorporation of corporations of a given class is specifically provided for by any other provision of law, such corporations may not be incorporated under the amendment of July 9, 1901, to the eighteenth paragraph of the second section of the Act of April 29, 1874. Thus where an

(1) Sayre's Trackless Trolley Companies, 30 Pa. C. C., 86 (1904).

application for a charter set forth that the purpose of the corporation was to be the "purchase, holding, pledging, selling or otherwise disposing of accounts and bills receivable, commercial paper, promissory notes, and other evidences of indebtedness" it was held that this constituted substantially a declaration of an intention to engage in the business of banking, and that, therefore, the application should be under the provisions of the laws relating to the incorporation of banks.²

The laws regulating the transaction of certain businesses in Pennsylvania contemplate that the same shall be carried on by individuals and not by corporations. Hence companies will not be incorporated to transact the same.³

Corporations may not be formed to become licensed liquor dealers, either at wholesale or retail, under said provision.⁴

It is doubtful if a corporation may be formed under this provision for the purpose of holding the stocks of other corporations,⁵ though at least one company of this character has been incorporated within a short time.

Subject to the foregoing exceptions, many varieties of companies, the incorporation of which was not provided for by previous laws may be formed.

For instance, a charter may be granted under said provision for the purpose of carrying on the general business of real estate agents.⁶

Also for the purpose of buying, selling, collecting and guaranteeing payment of ground rents, mortgages and other real estate securities.⁷

As we have already seen—Sec. 1365—corporations for dealing in merchandise both wholesale and retail and department stores are incorporated under this provision.

(2) Merchants' Finance Co.'s Charter, 10 Dau. Co. Rep., 166 (1907) ; 34 Pa. C. C., 131.

(3) Urling Co. Whipco Co., 30 Pa. C. C., 90 (1904) ; *Com. v. Alba Dentist Co.*, 13 D. R., 432 ; but corporations are permitted to be incorporated for carrying on the business of undertaking, a business which under the provisions of Sec. 6, Act of 1905, P. L., 299, is not permitted to be carried on by persons without a license. See *Undertaker's Signs*, 9 Dau. Co. Rep., 131 ; 32 Pa. C. C., 510 (1906).

(4) Brennan's License, 14 D. R., 737 (1905).

(5) See Whitworth's Creation of Corporations for Profit, P., 135.

(6) Application for Charter of Samuel W. Black Co., Ops., Atty. Gen., 1905, P., 5.

(7) Phila. Co. for Guaranteeing Mortgages, Op. Atty. Gen., 16 D. R., 522 (1907) ; 10 Dau. Co. Rep., 101.

CHAPTER LXXIX.

MISCELLANEOUS STATUTES OF GENERAL APPLICATION.

- 1832. An Act to Provide Civil Rights for All People.
- 1833. Regulation of the Computation of Time Under Charters and By-Laws of Corporations.
- 1834. Organization of Corporations for Profit by Executors or Trustees.
- 1835. Organization of Corporations Not for Profit by Trustees.
- 1836. Organizations Not for Profit to Carry out Trusts for the Benefit of Any Incorporated City.
- 1837. Method of Incorporation.
- 1838. Conveyance of Property to Corporation—Use of Parks, etc.
- 1839. Powers.
- 1840. Issue of Letters Patent.
- 1841. Authorizing the Collection of Contributions for Charitable Purposes.
- 1842. Restraining Corporations from Issuing Obligations Redeemable Otherwise Than in Gold or Silver or Current Bank Notes.
- 1843. Mechanics' Liens Against the Property of Corporations.
- 1844. Reports to be Made to the Secretary of Internal Affairs by Railway, Navigation, etc., Companies.
- 1845. To Protect Employes of Corporations in Their Rights to Form, Join and Belong to Labor Organizations.
- 1846. To Prohibit Mining and Manufacturing Corporations from Carrying on Company Stores.
- 1847. Payment of Wages to be Made Semi-Monthly.
- 1848. Assignment of Future Wages Not Valid.
- 1849. Factory Inspector Shall Bring Action.
- 1850. Wages of Employes a Lien Upon Property.
- 1851. Validation of Charters Granted by the Supreme Court and Courts of Common Pleas Prior to 1874.
- 1852. Validation of Acts Done by Corporations Created Under the Provisions of the Act of October 13, 1840, Before Recording Their Charters.
- 1853. Publication of List of Charters.
- 1854. Repeal of Certain Acts.
- 1855. Church Property to be Taken and Held Subject to the Control of the Lay Members.
- 1856. Fraudulent Appropriation of Property by Members of Corporations.
- 1857. Period of Incorporation—Power to Revoke Charters.
- 1858. Personal Liability of Officers and Stockholders of Corporations Formed Under the Act of April 29, 1874.
- 1832. An Act to Provide Civil Rights for All People.
Any person, company, corporation, being owner, lessee or

manager of any restaurant, hotel, railroad, street railway, omnibus line, theatre, concert hall or place of entertainment or amusement, who shall refuse to accommodate, convey or admit any person or persons on account of race or color over their lines, or into their hotel or restaurant, theatre, concert hall or place of amusement, shall, upon conviction thereof, be guilty of a misdemeanor and be punished by a fine not less than fifty dollars nor more than one hundred dollars.¹

1833. Regulation of the Computation of Time Under Charters and By-Laws of Corporations.

Where by any existing law or rule of court, or by any law or rule of court that may hereafter be enacted and made, the performance or doing of any act, duty, matter, payment or thing shall be ordered and directed, and where any court shall, by special or other order, direct the performance or doing of any act, matter, payment, sentence or decree, and the period of time or duration for the performance or doing thereof shall be prescribed and fixed, such time in all cases shall be so computed as to exclude the first, and include the last days of any such prescribed or fixed period or duration of time: *Provided*, That whenever the last day of any such period shall fall on Sunday, or on any day made a legal holiday by the laws of this Commonwealth, or of the United States, such day shall be omitted from the computation: *And provided*, That this act shall not apply to the payment of negotiable paper.²

The provisions of this act shall also apply to the ordinances, resolutions, by-laws and other regulations of all municipal or other public or private corporations now existing or hereafter created.³

1834. Organization of Corporations for Profit by Executors or Trustees.

Corporations for profit may be organized by executors or trustees acting under a will authorizing or directing them to carry on or continue a business of the testator with any other purpose than that of winding up the same, in the usual manner, whenever

(1) Act May 19, 1887, P. L., 130.

(2) Sec. 1, Act June 20, 1883, P. L., 136.

(3) Sec. 2, Act June 20, 1883, P. L., 136.

the business is such that a charter could have been obtained by the testator, to conduct the same, under the then existing laws of this Commonwealth. And the executors or trustees may unite with others in the organization of such corporations, and contribute the property, the legal title to which is vested in them, as capital to the corporations on terms to be agreed upon by the associates, and accept stock in the corporations in lieu thereof.

First. The whole of the proceeds of the trust estate, whether contributed or sold, and whether paid for by shares or money, shall be held on the same uses and for the same trusts and persons, and subject to the same powers, as the estate and property was held for or under before the organization.

Second. All persons having a beneficial interest, vested or contingent, who are in being at the time of such organization and are of full age, shall consent in writing to the organization. All persons who are in being and interested, immediately or contingently, if under age or *non compos mentis*, shall, by guardians or committee to be appointed for that purpose, consent. The husbands of all married women interested, if not living separate and apart, shall consent.

Third. The Orphans' Court of the county shall, upon petition, inquire into the circumstances and give their sanction to the terms and conditions of the organization. In appointing guardians or committees to inquire and consent under this act, no security shall be demanded, nor shall such guardian or committees be entitled to receive any property of the beneficiary, other than the compensation for his services ordered by the court.⁴

1835. Organization of Corporations Not for Profit by Trustees.

Whenever in and by the last will and testament of any testator, being a resident of this Commonwealth at the time of his death, devises or bequests of real or personal estate, or both, shall be made to trustees for the purpose of founding and maintaining any literary, medical or scientific undertaking, library association, or the promotion of music, or other fine arts, to be free to the public, and to be supported wholly from the property so devised or bequeathed, or the income thereof, and it is further by such will ordered or recommended that a corporation be formed to which the devised property and estate shall be conveyed by the

(4) Act April 22, 1889, P. L., 42.

said trustees, and upon which shall devolve the carrying into effect of the said testator's will touching such literary, medical or scientific undertaking, library association or the promotion of music or other fine arts, in all such cases it shall be lawful to insert in any application for such incorporation, and under the general incorporation act of one thousand eight hundred and seventy-four, a provision or provisions that, for the perpetuating a line of successors in such corporation, whenever any vacancy shall happen in the board of directors by reason of the death, resignation or removal from the proper county of any member thereof, the remaining directors may, by a majority vote of the whole remaining number thereof, elect a director to fill such vacancy. And that, where such will shall further direct that any one or more persons shall by virtue of their office be members of such board of directors, it shall be lawful to embody such direction in the said certificate of incorporation, under the said general incorporation act of one thousand eight hundred and seventy-four, as part of the organic law of such corporation.⁵

1836. Organization of Corporations Not for Profit to Carry Out Trusts for the Benefit of Any Incorporated City.

Whenever any person shall have heretofore made, or hereafter make any bequests, devises, or gifts, and shall have created, or may hereafter create, in connection therewith, a trust or trusts for the benefit of the people of any incorporated city of this Commonwealth, for the purpose of establishing and maintaining any library, museum, art gallery, school, or other institution for the advancement of learning, science, music, or art, or any one or more of said purposes, the terms and conditions and scope of the said trust or trusts being prescribed, and the manner in which the trustees shall be selected or appointed for the administration of said trust being specified, and providing that officers or representatives of the said city shall be some of said trustees, and if such bequests, devises, or gifts shall have been accepted by the city upon the terms imposed, it shall be lawful to form a corporation, in the manner hereinafter provided, for the management of said trust or trusts, either separately or together, if there be no inconsistency in said trusts.⁶

(5) Act June 25, 1885, P. L., 177.

(6) Sec. 1, Act May 28, 1907, P. L., 300.

1837. Method of Incorporation.

With the consent of the said city, evidenced by a resolution of its councils, the majority of said trustees, named or acting under the provisions of the instrument creating the trust or trusts, may present a petition to the Court of Common Pleas of the county in which said city shall be situate, which shall set forth the terms and provisions and conditions of such trust or trusts, the fact of the acceptance thereof by the city, as evidenced by the proper action of its councils, and, with such petition, the said trustee shall file articles of association, in which articles of association they shall certify:—

- 1.—The name under which such trust or trusts shall be incorporated.
- 2.—The purpose for which it is formed (which shall embody the terms and provisions of the trust or trusts).
- 3.—The place or places where its business is to be transacted.
- 4.—The term for which it is to exist.
- 5.—The names and residences of the trustees, and the manner in which their successors are to be chosen or qualified.
- 6.—The officers of the said city, and the names of those filling the offices at the time, who *ex virtute officii* are trustees, and the manner of their appointment or selection by the proper body of the city government.
- 7.—Such other provisions as may be necessary to carry out the intent of the testator or donor.

That the practice as to the execution, acknowledgment, and advertisement of said petition and articles of association shall follow the practice provided by the act to which this is a supplement, relating to corporations of the first class. And the said petition and articles of association shall be presented to a law judge of the said county, who is hereby required to examine them, and, if they shall be found to be in proper form, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts; and he shall order and decree thereon that the charter applied for is approved; and upon the recording of said charter and order, in the office for the recording of deeds in and for the county aforesaid, the said trustees shall be a corporation, for the purposes and upon the terms mentioned in said petition and in said articles of association; and thereupon the property and money held by the

said trustees under said trust or trusts shall immediately vest in the said corporation.⁷

1838. Conveyance of Property to Corporation—Use of Parks, Etc.

Upon the incorporation of any institution under the provisions of this act, it shall be lawful for said city to grant and convey to such corporation any property which said city may have provided for the use of such institution under the terms of the original gift; and to permit such corporation to hold, occupy, and use such portions of its public parks, or lands acquired for, or set aside for the use of, such institution under the terms of the original gift; and to appropriate annually for its support any moneys it may have agreed to appropriate under the terms of the original gift.⁸

1839. Powers.

Any corporation created under this act shall have perpetual succession, by its corporate name, for the purposes mentioned in its articles; and shall have power to maintain and defend judicial proceedings, make and use a common seal, and alter the same at pleasure; hold, purchase, sell, and transfer such real and personal property as the purposes of the corporation may require; appoint and remove subordinate officers and agents; to enter into any obligation necessary for the transaction of its affairs, and to make, and, from time to time, alter or amend by laws for the regulation of its affairs, not inconsistent with its articles of association or the laws of this Commonwealth.⁹

1840. Issue of Letters Patent.

Upon the application of the president and secretary of any corporation heretofore or hereafter created under any general or special law of this Commonwealth, accompanied by due proof that said corporation has complied with all the conditions provided by law and the Constitution to enable it to have a corporate existence and transact business, it shall be lawful for the Governor to issue letters patent under the great seal of the Commonwealth, in such form as he may prescribe, to such corporation,

(7) Sec. 2, Act May 28, 1907, P. L., 300.

(8) Sec. 3, Act May 28, 1907, P. L., 300.

(9) Sec. 4, Act May 28, 1907, P. L., 300.

declaring it to be and erecting it into a body corporate or politic in deed and in law.¹⁰

1841. Authorizing the Collection of Contributions for Charitable Purposes.

It shall be the duty of any corporation, manufacturing establishment or colliery, to retain from and out of the wages or earnings of any person by them employed, on his written order, any contribution or voluntary subscription by such person made, in monthly or other payments, for the support of any hospital or other charitable institution, and the sum so retained to pay over upon demand to such hospital or other charitable institution; and any payment so made shall be as valid as if paid to the person by whom said wages or earnings were earned: *Provided*, That the hospital or charitable institution claiming the same, shall give notice in writing at least ten days before the time for the payment of said wages or earnings to such corporation, manufacturing establishment or colliery, of the name or names of the person or persons by them employed, who have subscribed to the support of such hospital or charitable institution, and the amount by them severally subscribed, and when or how often payable, and how long to continue, and file said subscription with said corporation, manufacturing establishment or colliery.¹¹

1842. Restraining Corporations From Issuing Obligations Redeemable Otherwise Than in Gold or Silver or Current Bank Notes.

From and after the passage of this act it shall not be lawful for any corporation within this Commonwealth, directly or indirectly, either by itself or through any agent or agents, individual or individuals, to make, issue, re-issue, pay out or circulate, or cause to be issued, re-issued, put out or circulated, any certificate, check, order or due bill or acknowledgment of indebtedness of any description for any purpose whatsoever, payable or redeemable in any goods, property or effects, or payable or re-

(10) Act May 15, 1874, P. L., 186. Corporations reorganized under the Act of April 8, 1861, and supps., after judicial sale, take their letters patent under this act. *Goodbread v. Phila., Bala & B. M. Tpk. Co.*, 13 Pa. Super. Ct., 82.

(11) Act May 15, 1874, P. L., 194.

deemable in anything except in gold and silver, and that any violation of the provisions of this act shall be held and deemed to be a forfeiture of the charter of any company so offending, and any private citizen may, by quo warranto proceed, according to law, to have such forfeiture declared: *Provided*, That this act shall not be construed to authorize any corporation or individual, not expressly authorized by existing laws, to issue any note, bill, check or certificate whatever, in the nature or similitude of a bank note, and intended for circulation; and that all laws inconsistent with this act be and the same are hereby repealed. *And provided further*, That this section shall not be construed so as to prevent any corporation from drawing orders in the ordinary course of business, not intended for circulation, or in payment of interest, and that such orders shall not be negotiable.¹²

1843. Mechanics' Liens Against the Property of Corporations.

Where judgment is recovered upon any claim, the property named in which is essential to the business of a quasi-public corporation, the claimant shall have execution thereupon as in other cases of judgments against such corporations. Upon the distribution of any fund realized by a sale of the franchises and the whole or any part of the assets of the corporation, the court shall determine the relative value of the whole improvement to the property, to recover from part or all of which the claim was filed, and the claim shall be preferred with other such claims, to the extent that the value thus determined bears to the whole value of the franchises and assets sold.¹³

1844. Reports to Be Made to the Secretary of Internal Affairs by Railway, Canal, Navigation, and Telegraph and Telephone Companies.

It is hereby made the duty of each railroad, canal, navigation, telegraph and telephone company, or other corporation owning, operating or controlling lines or works in whole or in part within the limits of this State, to make out and return to the Secretary of Internal Affairs a complete report, according to the form to be prescribed by the said Secretary of Internal Affairs, which, among other things, shall embrace in detail the operations

(12) Sec. 1, Act April 21, 1849, P. L., 673.

(13) Sec. 46, Act June 4, 1901, P. L., 452.

and affairs of said corporations during the fiscal year, together with such other information as the Secretary shall direct. Said report shall be attested by the oath or affirmation of at least two of the following named officers of the company, president, general manager, superintendent, sequestrator, secretary, treasurer and auditor. That said report shall cover the transactions of each of said corporations for the fiscal year ending on the thirtieth day of June, each year, and shall be filed in the office of Secretary of Internal Affairs not later than the thirty-first day of August in each year.¹⁴

Every such railroad, canal, navigation, telegraph and telephone company, or other corporation owning, operating or controlling lines of railway, canal, transportation, telegraph or telephone, located in whole or in part in Pennsylvania, that shall refuse or neglect to make such report as herein provided and at the time specified in the second section of this act, shall be liable to a penalty of five thousand dollars to the use of the Commonwealth for every such refusal or neglect, to be sued for and recovered as debts of like amount are or may be by law recoverable.¹⁵

1845. To Protect Employees of Corporations in Their Right to Form, Join and Belong to Labor Organizations, by Prescribing Penalties for Any Interference Therewith.

If any officer, agent or employe of any corporation chartered under the laws of this Commonwealth, or any foreign corporation doing business in this Commonwealth, shall coerce or attempt to coerce any employe of such corporation by discharging them or threatening to discharge them from employment of such corporation because of their connection with any lawful labor organization which such employe may have formed, joined or belonged to, or if any such officer, agent or employe shall exact from any applicant for employment in such corporation any promise or agreement not to form, join or belong to such lawful labor organization, or not to continue a member of such lawful labor organization, or if any such officer, agent or employe shall in any way prevent or endeavor to prevent any employe from forming,

(14) Sec. 2, Act April 19, 1897, P. L., 25, amending the Act of April 13, 1889, P. L., 202, which amended the Act of April 9, 1870, P. L., 61.

(15) Sec. 3, Act April 19, 1897, P. L., 25, amendatory, as stated in the preceding note. Street railway and traction companies are required to report under the provisions of this act.

joining or belonging to such lawful labor organization, or shall interfere or attempt to interfere by any other means whatsoever, direct or indirect, with any employe's free and untrammelled connection with such lawful labor organization he or they shall be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not more than two thousand nor less than one thousand dollars (\$1,000), and imprisonment for a term not exceeding one year, or either, or both, in the discretion of the court.¹⁶

1846. To Prohibit Mining and Manufacturing Corporations From Carrying on Company Stores.

On and after the passage of this act it shall not be lawful for any mining or manufacturing corporation of this Commonwealth, or the officers or stockholders of any such corporation, acting in behalf or in the interest of any such corporation, to engage in or carry on, by direct or indirect means, any store known as a company store, general supply store or store where goods and merchandise other than such as have been mined or manufactured by the mining or manufacturing corporation of which said officers or stockholders are members, are kept or offered for sale.

No mining or manufacturing corporation engaged in business under the laws of this Commonwealth, shall lease, grant, bargain or sell to any officer or stockholder of any such corporation, nor to any other person or persons whatsoever, the right to keep or maintain upon the property of any such corporation, any company general supply or other store in which goods other than those mined or manufactured by the corporation granting such right, shall be kept or exposed for sale, whenever such lease, grant, bargain or sale as aforesaid, is intended to defeat the provisions of the first section of this act. Nor shall any such mining or manufacturing corporation, through its officers, stockholders or by any rule or regulation of its business, make any contract with the keepers or owners of any store, whereby the employes of such corporation shall be obliged to trade with such keeper or owner, and that any such contract made in violation of this act, shall be *prima facie* evidence of the fact that such store is under the control of such mining or manufacturing corporation and in violation of this act.

For any violation of any of the provisions of this act by

(16) Act of June 4, 1897, P. L., 116.

any mining or manufacturing corporation aforesaid, such mining or manufacturing corporation so offending, shall forfeit all charter rights granted to it under the laws of this Commonwealth, and it is hereby declared and made the duty of the Attorney General of this Commonwealth, upon complaint of such violation of any of the provisions of this act by a petition signed and sworn to by two or more citizens, residents of the county where the offense is sworn to have been committed, to immediately commence proceedings against the corporation or corporations complained against by a writ of quo warranto.¹⁷

Every manufacturing, mining or quarrying company incorporated under the provisions of this act, shall be confined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or articles of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employes or officials to engage in the buying or selling, upon the lands possessed by it of any wares, goods or commodities or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employes by reason of the sale or furnishing of goods, wares or merchandise by any person to such operatives or employes, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company from supplying to its employes oil, powder and other articles and implements necessary for or used in mining.¹⁸

1847. Payment of Wages Required to Be Made Semi-Monthly.

From and after a period of two months subsequent to the date of the passage of this act, every individual, firm, association or corporation employing wage-workers, skilled or ordinary, laborers engaged at manual or clerical work, in the business of mining or manufacturing, or any other employes, shall make pay-

(17) Act June 9, 1891, P. L., 256.

(18) Sec. 43, Act April 29, 1874, P. L., 106. The keeping of a company store does not entail a forfeiture of a charter of a corporation or of the rights of any creditor or stockholder of the company. *Hooven Mercantile Co. v. Evans Mining Co.*, 193 Pa., 28 (1899).

ment in lawful money of the United States to the said employes, laborers and wage-workers, or to their authorized representatives; the first payment to be made between the first and fifteenth, and the second payment between the fifteenth and thirtieth of each month, the full, net amount of wages or earnings due said employes, laborers and wage-workers upon the first and fifteenth instant of each and every month wherein such payments are made. And in case any individual, firm, corporation or association or other employer shall refuse to make payment when demanded, upon the dates herein set forth, to wage-workers, laborers or other employes employed by or with the authority of such individual, firm, corporation or association or other employer, the said individual, the members of the firm, the directors, officers and superintendents or managers of said corporation and associations shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding two hundred dollars.¹⁹

1848. Assignment of Future Wages Not Valid.

No assignment of future wages payable semi-monthly, under the provisions of this act, shall be valid, nor shall any agreement be valid that relieves the said firms, individuals, corporations or associations from the obligation to pay semi-monthly, and in the lawful money of the United States.²⁰

1849. Factory Inspector Shall Bring Action.

It is hereby made the duty of the Factory Inspector and his deputies to bring actions in the name of the Commonwealth, against every individual, firm, corporation and association violating the provisions of this law, upon the request of any citizen of this Commonwealth. Upon his failure to do so, any citizen of this Commonwealth is hereby authorized to do so in the name of the Commonwealth.²¹

1850. Wages of Employes a Lien Upon Property.²²

(19) Sec. 1, Act May 20, 1891, P. L., 96, amending the Act of May 23, 1887, P. L., 180. This Act was held unconstitutional in *Showalter v. Ehlman, et al.*, 5 Pa. Super. Ct., 242 (1897). The prior Act of June 29, 1881, P. L., 147, upon this subject, was also held to be unconstitutional in *Godcharles v. Wigeman*, 113 Pa., 431 (1886).

(20) Sec. 2, Act May 20, 1891, P. L., 96.

(21) Sec. 3, Act May 20, 1891, P. L., 96.

(22) See Act May 12, 1891, P. L., 54.

1851. Validation of Charters Granted by the Supreme Court and Courts of Common Pleas Prior to 1874.

All charters of incorporation, the supplements and amendments thereto, heretofore granted by the Supreme Court and the several Courts of Common Pleas of this Commonwealth, are hereby validated and confirmed: *Provided*, That the provisions of this act shall only apply to such corporations as are actually operating under and transacting business in pursuance and by virtue of such charters, supplements and amendments: *And provided further*, That said corporations shall hold their charters, supplements and amendments subject to all the requirements and restrictions of the Constitution of this Commonwealth, and that this act shall not affect any rights acquired previous to its enactments.²³

1852. Validation of Acts Done by Corporations Created Under the Provisions of the Act of October 13, 1840, Before Recording Their Charters.

Where any act has been done, or transfer or conveyance of any property been made to, or by any corporation created or intended to be created by virtue of the provisions of the said act of assembly,²⁴ or its supplements, in good faith, before the actual record of their charters, such acts, transfers and conveyances shall, after such record has been duly made, be deemed and taken to be valid and effectual for all purposes, saving, nevertheless, the just rights of persons, if any, acquired before the passage of this act, by reason of the failure to record such charters.²⁵

1853. Publication of Lists of Charters.

It shall be the duty of the Secretary of the Commonwealth, every two years, to prepare and publish in separate pamphlet form, a certified list of all charters of incorporations filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose and location of every such corporation, and he shall prepare and publish a complete alphabetical index to the same. The first list published under this act shall cover the two years ending May thirty-first, Anno Domini one thousand nine hundred and one, and a similar publication shall be made

(23) Act May 11, 1874, P. L., 133.

(24) The Act of October 13, 1840, giving Courts of Common Pleas the power to incorporate.

(25) Act April 1, 1874, P. L., 51.

every two years thereafter. The number of copies of said pamphlet to be published shall be ten thousand, of which five hundred shall be for the use of the members of the Senate, one thousand for the use of the members of the House of Representatives, and eight thousand five hundred for distribution by the Secretary of the Commonwealth: *Provided*, That the amount of capital of each corporation for which a charter is granted be set opposite the name of the corporation: *Provided further*, That all foreign corporations, registering in this State, be placed in same pamphlet, under the head of foreign corporations, and the amount of capital mentioned in the certificate of registration.²⁶

1854. Repeal of Certain Acts.

From and after the passage of this act, the acts of the general assembly, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April seventh, one thousand eight hundred and forty-nine; "An act to enable joint tenants, tenants in common and adjoining owners of mineral lands in this Commonwealth, to manage and develop the same," approved April twenty-first, one thousand eight hundred and fifty-four; "An act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three; "An act to provide for the incorporation of iron and steel manufacturing companies," approved March twenty-first, one thousand eight hundred and seventy-three, and the several supplements to each of said acts, be and the same are hereby repealed, so far as they provide for the creation of corporations for any of the purposes provided by this act, or are inconsistent with this act.²⁷

1855. Church Property to Be Taken and Held Subject to the Control of the Lay Members.

Whensoever any property, real or personal, shall hereafter be bequeathed, devised or conveyed to any ecclesiastical corporation, bishop, ecclesiastic or other person, for the use of any church, congregation or religious society, for religious worship or sepulture, or the maintenance of either, the same shall not be

(26) Act June 7, 1901, P. L., 530, amending Sec. 45, Act April 29, 1874, P. L., 107.

(27) Sec. 46, Act April 29, 1874, P. L., 107.

otherwise taken and held, or enure, than subject to the control and disposition of the lay members of such church, congregation or religious society, or such constituted officers or representatives thereof as shall be composed of a majority of lay members, citizens of Pennsylvania, having a controlling power, according to the rules, regulations, usages or corporate requirements thereof, so far as consistent herewith: ²⁸ *Provided*, It shall be lawful for the majority of the male members, of lawful age, of any unincorporated church, congregation or religious society, to choose for their trustee or trustees, any other person or persons than a layman; and whenever not previously declared, to declare the manner in which the title to their trust property shall be held and conveyed, subject however to all the terms and conditions upon which the same may have been bequeathed, devised or conveyed to such unincorporated church, congregation or religious society, and upon due proof of such consent, any court, having jurisdiction over trusts, may direct the legal title to be conveyed accordingly; but nothing herein contained shall authorize the diversion of any property from the purposes, uses and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated: *And provided*, All charters heretofore granted for any church, congregation or religious society, without incorporating therein the requirement that the property, real and personal, of such corporation shall be taken, held, and enure subject to the control and disposition of the lay members thereof, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirement had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: *Provided*, That all property, real and personal, held by such existing corporation shall enure and be held subject to the control and disposition of

(28) When applications for church charters do not specifically provide as herein required they will be refused. In re St. David's Church, 11 D. R., 549 (1902).

the lay members thereof, or such constituted officers or representatives thereof, as shall be composed of a majority of lay members, citizens of Pennsylvania, having a controlling power according to the rules and regulations, usages, or corporate requirements thereof, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.²⁹

1856. Fraudulent Appropriation of Property by Members of Corporations.

If any member of a co-partnership, corporation or association without the consent of his associate or associates in such co-partnership, corporation or association, wilfully and fraudulently converts to his own use or takes, makes way with or secretes with intent to convert to his own use, or to the use of another, or withholds or appropriates or otherwise fraudulently applies or makes use of any money, goods, rights in action or other valuable securities or effects belonging to such co-partnership, corporation or association and which may have come into his possession or under his care, or who shall wilfully or fraudulently use or pledge the name of the partnership, corporation or association for any other purpose than the *bona fide* use of said firm, co-partnership, corporation or association, he shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to an imprisonment not exceeding two years, or to a fine not exceeding one thousand dollars, or both or either at the discretion of the court.³⁰

1857. Period of Incorporation—Power to Revoke Charters.

The charters for incorporations named in this act may be made perpetual, or may be limited in time by their own provisions; and the general assembly reserves the power to revoke or annul any charter of incorporation granted or accepted under the provisions of this act, whenever in the opinion of the said general assembly it may be injurious to the citizens of this Commonwealth, in such

(29) Act May 1, 1907, P. L., 132, amending Act June 2, 1887, P. L., 298, which amended the Act of April 26, 1855. See Act April 14, 1905, P. L., 159, which permitted churches whose charters were defective as to the provision for the holding of their property by the lay members thereof to be amended in that respect within two years. The Act of 1907 makes this unnecessary.

(30) Act June 3, 1885, P. L., 60.

manner, however, that no injustice shall be done to the corporators or their successors.³¹

1858. Personal Liability of Officers and Stockholders of Corporations Formed Under the Act of April 29, 1874.

The officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporations otherwise than in this [act] provided.³²

(31) Sec. 4, Act April 29, 1874, P. L., 76.

(32) Sec. 24, Act April 29, 1874, P. L., 83.

APPENDIX.

FORMS.

CORPORATIONS OF THE FIRST CLASS.

- 1859. Notice of Application for Charter.
- 1860. Affidavit of Publication of Notice.
- 1861. Form of Charter.
- 1862. Decree.
- 1863. Form of Church Charter.
- 1864. Form of Petition for Amendment to Charter.
- 1865. Order for Publication.
- 1866. Notice of Application for Amendment.
- 1867. Decree.

CORPORATIONS OF THE SECOND CLASS.

- 1868. Fee Bill of the Secretary of the Commonwealth.
- 1869. Application for Charter.
- 1870. Notice of Application for Charter.
- 1871. Proof of Publication of Notice of Application.
- 1872. Form of Clause to be Inserted in Charters of Corporations Taking Property for Stock.
- 1873. Clauses Which May be Inserted in Charters to Express Objects of Corporations.
- 1874. Articles of Association of Banks.
- 1875. Certificate of Incorporation of a Bank.
- 1876. Application for Charter of a Building and Loan Association.
- 1877. Articles of Association of a Co-operative Association.
- 1878. Articles of Association of an Insurance Company.

- 1879. Application for Charter of a Natural Gas Company.
- 1880. Articles of Association of a Street Railway Company.
- 1881. Application for Charter of a Traction Company.
- 1882. Return of Increase of Capital Stock and Indebtedness—Without Waiver.
- 1883. Return of Increase of Capital Stock and Indebtedness—With Waiver.
- 1884. President's or Treasurer's Return of Actual Increase or Decrease of Capital Stock or Indebtedness.
- 1885. Statement of Location of Office of a Foreign Corporation.
- 1886. Acceptance of the Constitution and of the Act of April 29, 1874.
- 1887. Application for Amendment of Charter.
- 1888. Petition for Decree of Dissolution—Order for Publication of Notice, etc.
- 1889. Decree of Dissolution.
- 1890. Form of Agreement for Consolidation and Merger.
- 1891. Form for Securing the Powers of Trust Companies by Title Insurance Companies.
- 1892. Form of Appeal to the Court of Common Pleas of Dauphin County From Settlements for State Taxes Made by the Accounting Officers.
- 1893. Form of Bond to be Filed with Such Appeal.

- 1894. Certificate for the Recharter of a Corporation.
- 1895. Certificate of Reorganization by Purchasers at Judicial Sale.
- 1896. Extension of Route of a Street Railway Company.
- 1897. Abandonment of Portion of Route by a Street Railway Company.
- 1898. Form of By-Laws.
- 1899. Form of Oath of Judges of Elections.
- 1900. Form of Proxy.
- 1901. Application for Change of Name of Corporations of the Second Class.
- 1902. Registry of Domestic Corporations in Auditor General's Department.
- 1903. Registry of Foreign Corporations in Auditor General's Department.
- 1904. Form of Capital Stock Reports of Miscellaneous Corporations.
- 1905. Form of Report of Capital Stock of Manufacturing Companies.
- 1906. Form of Report of Capital Stock of Transportation and Transmission Companies.
- 1907. Form of Report of Capital Stock of Mining and Quarrying Companies.
- 1908. Other Forms of Capital Stock Reports.
- 1909. Form of Report of Corporate Loans.
- 1910. Form of Report of Gross Receipts of Transportation, Transmission and Electric Light Companies.
- 1911. Form of Certificate of Common Stock.
- 1912. Form of Assignment on Back of Certificate.
- 1913. Minutes of an Annual Meeting at Which Directors are Elected.
- 1914. Judges' Return.
- 1915. Forms of Minutes Where Property is to be Purchased in Consideration of Stock.
- 1916. Agreement for the Purchase of Property.
- 1917. Corporation Mortgage or Deed of Trust.

CORPORATIONS OF THE FIRST CLASS.

1859. Notice of Application for Charter.

Notice is hereby given that an application will be made to the Court of Common Pleas of County, on the day of , 19 , at o'clock, under the provisions of the Corporation Act of 1874 and its supplements, for a charter for an intended corporation to be called the , the character and object of which are ; and for these purposes to have, possess and enjoy all the rights, benefits and privileges conferred by the said act and the supplements thereto.

A. B., Solicitor.

1860. Affidavit of Publication of Notice.

See Section 1871.

1861. Form of Charter.

To the Hon.

Judge of the Court of Common Pleas of County

Agreeably to the provisions of the Act of the General Assembly of Pennsylvania, entitled "An act to provide for the incorporation and regulation

of certain corporations," approved the 29th day of April, A. D., 1874, and the several supplements thereto, the undersigned of whom are citizens of Pennsylvania, have associated themselves together for the purposes and upon the terms and by the name hereinafter set forth, and to the end that they may be duly incorporated according to law hereby certify:

1. The name of the intended corporation is
2. The purposes for which the said corporation is formed are as follows:
3. The business of the corporation is to be transacted in
4. The corporation shall have perpetual succession by its corporate name (or shall exist for the term of years.)
5. The yearly income of the corporation from other sources than real estate shall not exceed the sum of dollars.
6. The said corporation shall have no capital stock. The names and residences of the subscribers are as follows:

(If the corporation is to have capital stock, substitute for the foregoing: The names and residences of the subscribers and the number of shares of stock subscribed by each, are as follows:)

7. The number of directors is fixed at , and the names and residences of those who are chosen directors for the first year are as follows:

8. The corporation has no capital stock (or: The capital stock of said corporation is \$, divided into shares, of the par value of \$ each).

Witness our hands and seals this day of A. D. 19
 (Seal.)
 (Seal.)
 (Seal.)
 (Seal.)
 (Seal.)

Commonwealth of Pennsylvania } ss.
 County of

Before me, a in and for said county, personally appeared three of the subscribers to the foregoing certificate of incorporation, who, in due form of law acknowledge the same to be their act and deed, and the act and deed of their said associates, according to the act of Assembly in such case made and provided. In testimony whereof I have hereunto set my hand and affixed my official seal this day of , A. D. 19 .

Recorder of Deeds or Notary Public.

(Seal.)

1862. Decree.

In the Court of Common Pleas of County, No. , Term, 19 .

In the matter of the incorporation of the .

ACKNOWLEDGMENT.

State of Pennsylvania, }
County of } ss.

Be it remembered, That on the day of , A. D. 19 , before me, , in and for said county, personally appeared , president, and , secretary of the Company, who, being first duly sworn, according to law, deposed and said that they were present at the execution of the above and foregoing petition; that the seal affixed thereto is the common and corporate seal of the said Company, and that they saw the same affixed to said petition; that the said petition was duly signed, sealed and delivered by and as the act and deed of the said

Company, for the purposes therein named, and that the signatures of these affiants, appended to the said petition in attestation of the execution and delivery thereof, are their true and proper signatures.

.
.

Sworn and subscribed before me this day of , A. D. 19 .
Witness my hand and official seal.

.
Recorder of Deeds or Notary Public.

1865. Order for Publication.

And now, , 19 , the within petition having been presented to the court, it is found that the amendments, improvements and alterations therein set forth and prayed for are lawful and beneficial, and do not conflict with the requirements of the act of General Assembly, entitled "An act for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, 1874, and the supplements thereto, nor with the requirements of the Constitution, and it is therefore ordered and decreed that notice of such petition be given, as required in the forty-second section of said act.

.
Judge.
.
Prothonotary.
(Seal.)

1866. Notice of Application for Amendment.

Notice is hereby given that an application will be made to the Court of Common Pleas of County, on the day of , 19 , at o'clock, for the approval and granting of certain amendments to the charter of the Company, as set forth in the petition therefor filed in said court, agreeably to the provisions of the "Corporation Act of 1874" and its supplements.

.
Solicitor.

(Make proof of publication in the same manner as the same is made of notice of application for charter.)

1887. Decree.

And now, to wit, this day of , A. D. 19 , it appearing on the presentation of the within petition that the order of court heretofore made has been complied with, and that publication of notice of the presentation of said petition has been made, as required by said order, it is therefore ordered and decreed, that the said amendments, improvements and alterations prayed for in said petition are approved, and that upon the recording of said petition and its endorsements and this order in the office of the recorder of deeds in and for the county of , which is now hereby ordered, the said amendments, improvements and alterations shall be deemed and taken to be a part of the charter of the Company.

Attest:

Judge.

Prothonotary.
(Seal.)

CORPORATIONS OF THE SECOND CLASS.

1888. Fee Bill of the Secretary of the Commonwealth.

Statement of fees for filing and recording certain papers in the office of the Secretary of the Commonwealth, and for the issuing of Letters Patent to corporations:

For filing and recording papers relating to—

Enlarging of territory of Natural Gas Company	\$15 00
Extension of Route of Street Railway	20 00
Abandonment of Route of Street Railway	15 00
Election Return on increase or decrease of capital stock or in debtedness when notice of meeting has been published for 60 days	30 00
Same, when publication of notice has been waived	35 00
Return of President or Treasurer of actual increase or decrease of capital stock or indebtedness.....	5 00
Certificate of Dissolution of a Corporation	10 00
Foreign Corporations, Statement of Location of Office	10 75
Statement of Revocation of Agent by Foreign Corporation	5 00
Acceptance of Constitution and Act of Assembly	10 00
Acceptance of Act of 1874 and letters patent	30 00
Filing Treasurer's affidavit of paid-up capital stock	10 00
Change of corporate name	20 00
Re-organization after judicial sale, including acceptance of the Constitution	40 00
Articles of Co-operative Associations (including copies)	26 00
Agreements of merger and consolidation	55 00
Certificate of each secretary, attached to agreement of merger and consolidation	5 00

For Letters Patent for—

Re-Charter including acceptance of Constitution or Act	\$40 00
Insurance Companies, including statements	37 00
Railroad Companies, (Steam or Street)	82 00
Amendments to charters, except to those of railroad companies..	30 00
All other corporations	30 00

The Act of May 3, 1899, fixes bonus on charters and upon increases of capital stock at one-third of one per cent., payable in advance.

The Act of February 9, 1901, makes the bonus on increase of capital stock payable when the stock is actually issued, the bonus to be paid on the actual increase.

NOTE.—All fees must be paid in full, and also the whole bonus on charters before papers can be marked filed and recorded, or letters patent can be issued by the Governor.

1869. Application for Charter.

To the Governor of the Commonwealth of Pennsylvania:

SIR:—

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled: "An act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1. The name of the proposed corporation is
2. Said corporation is formed for the purpose of*
3. The business of said corporation is to be transacted in
4. Said corporation is to exist for the term of years.
5. The names and residences of the subscribers and the number of shares subscribed by each, are as follows:

Name.	Residence.	No. of Shares.
-------	------------	----------------

6. The number of directors of said corporation is fixed at and the names and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
-------	------------

*In applications for water company charters the following is inserted after paragraph 2: "The name of the river, stream or other body of water, from which it is proposed to take or use and, as near as may be, the points on said river, stream or other body of water, between which said "water" or "water power" is proposed to be taken or used, is as follows, viz.:

7. The amount of the capital stock of said corporation is \$, divided into shares of the par value of \$, and \$, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose name and residence are:

(Seal.)
(Seal.)
(Seal.)

State of Pennsylvania, }
County of } ss.

Before me, in and for the county aforesaid, personally came the above named , who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the day of , A. D.

19 .
(Seal)

State of Pennsylvania, }
County of } ss.

Personally appeared before me, this day of , A. D. 19 ,

, who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn to and subscribed before me, the day and year aforesaid.

. }
. }
. }

(Seal)

(ENDORSEMENTS.*)

APPLICATION OF

EXECUTIVE CHAMBER.

Harrisburg, 19 .

To the Secretary of the Commonwealth:

Having examined the within application, and found it to be in proper

*In the case of applications for water company charters there is the following additional endorsement:—

Filed in the office of the Water Supply Commission of Pennsylvania on the day of A. D. 190 .

Secretary.

Harrisburg, , 190 .

Approved :—Water Supply Commission of Pennsylvania.

Secretary.

form, and within the purposes of the class of corporations specified in section two of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29th, A. D. 1874, and the several supplements thereto, I hereby approve the same, and direct that letters patent issue according to law.

.....
Governor.

SECRETARY'S OFFICE.

Pennsylvania, ss:

Enrolled in Charter Book, No.

Page

Witness my hand and Seal of Office, at Harris-
burg, this day of , A. D. 19

.....
Secretary of the Commonwealth.

1870. Notice of Application for a Charter.

Notice is hereby given that application will be made by (insert the names of three or five corporators, according to the act under which the proposed corporation is to be formed), to the Governor of Pennsylvania, on the day of , 19 , at o'clock, under the provisions of an act of Assembly, entitled , approved the day of , , and the supplements thereto, for a charter for an intended corporation, to be called , the character and object of which is , and for these purposes to have, possess and enjoy all the rights, benefits and privileges by said act of Assembly and the supplements thereto conferred.

.....
Solicitor.

1871. Proof of Publication of Notice of Application.

(Attach copy of notice here.)

(Attach copy of notice here).

State of Pennsylvania, }
County of } ss.

being duly sworn, doth depose and say: That he is one of the corporators of the Company.

That a notice, of which the above are copies, was published in the and the , both newspapers of general circulation, printed and published in the county of , State of Pennsylvania.

The said notice was published, to wit

In the on the days of , 19 .

in the on the days of , 19 .

Sworn to and subscribed before me, }
this day of , 19 . }
(Seal)

1872. Form of Clause to be Inserted in Charters of Corporations Taking Property for Stock, Under Section 17, Act of April 29, 1874.

.....shares of the capital stock above subscribed for by and

.....shares, above subscribed for by, are paid in full, and to be issued to said parties, respectively, as full paid capital stock, not liable to any further calls or assessments, in consideration of the conveyance by said parties to this corporation at the price and consideration of dollars, of certain property, to wit , which property is necessary for the purposes of the organization and the business of this corporation.

1873. Clauses Which May be Inserted in Charters to Express the Objects of Corporations.

The following statements of purpose, additional to those contained in the chapters treating of different classes of corporations, respectively, are given herewith:

BOOM COMPANIES.

Said corporation is formed for the purpose of constructing dams, and the driving and floating of saw-logs, timber and lumber, on the , in the county of , a stream not exceeding thirty-five miles in length, with the right to purchase dams, and erect and maintain new dams on said stream, and to clear out, straighten, deepen, crib and widen said stream.

BRIDGE OR FERRY COMPANIES.

Said corporation is formed for the purpose of erecting, constructing and maintaining a bridge (or ferry) and approaches thereto over the river, from a point at or near , in the county of , to a point on the opposite side of said river, in the county of .

ROAD OR TURNPIKE COMPANY.

The said corporation is formed for the purpose of building and maintaining an artificial road or turnpike of (stone, gravel and earth), from a point at or near , in the county of , to a point at or near , in the county of , a distance of miles, all of said road being located in the county of (or, so many miles of said road being in the county of , and so many miles being located in the county of , as the case may be).

COMPANIES FOR BUILDING SHIPS.

The said corporation is formed for the purpose of building ships, vessels or boats, for the carriage of persons and property.

ICE COMPANY.

The said corporation is formed for the purpose of supplying ice to the public.

NATURAL GAS COMPANY.

Said corporation is formed for the purpose of supplying light, heat and

power, by means of natural gas, to the public at the _____ of _____, and to such persons, partnerships and associations residing therein or adjacent thereto, as may desire the same.

PRINTING AND PUBLISHING COMPANY.

The said corporation is formed for the purpose of transacting a printing and publishing business.

PIPE LINE COMPANY.

The said corporation is formed for the purposes of transporting, storing, insuring and shipping petroleum; and for the laying down and constructing, maintaining and operating pipes, tubing, tanks, and such other machinery, devices or arrangements as may be necessary to fully carry out that right, and also with the right to enter upon, take and occupy such land and other property as may be requisite for the purpose of such corporation.

INCLINE PLANE COMPANY.

The said corporation is formed for the purpose of erecting, maintaining and operating an inclined plane, in the _____ of _____, county of _____, from a point at _____, to a point at _____, for carrying, conveying and transporting passengers and freight.

REAL ESTATE COMPANY.

The said corporation is formed for the purpose of purchasing and selling real estate, and for holding, leasing and selling real estate.

TITLE INSURANCE AND TRUST COMPANY.

The said corporation is formed for the purpose of insuring the owners of real estate, mortgagees and others interested in real estate from loss by reason of defective titles, incumbrances and liens.

1874. Articles of Association of Banks.

Articles of Association of the _____.

To His Excellency the Governor of the Commonwealth of Pennsylvania, the Attorney General and the Commissioner of Banking:—

KNOW ALL MEN BY THESE PRESENTS:—That we, who have hereunto subscribed our names and set our seals, do by these presents associate ourselves together for the purpose of carrying on the business of banking, under the provisions of the act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirteenth day of May, A. D. 1876, entitled "An act for the incorporation and regulation of banks of discount and deposit," and the supplements thereto, and do hereby ratify and confirm the same as our Articles of Association.

1st. Our Association shall be called the _____.

2nd. The location or place where the business of the said corporation

shall be carried on is in the town of _____, county of _____, State of Pennsylvania.

3rd. The amount of capital stock shall be _____ dollars (\$ _____), to be divided into _____ (_____) shares of the par value of _____ dollars (\$ _____) each.

4th. The names and places of residence of each of the parties to these Articles of Association, and number of shares held by each, are as follows:

Name.	Residence.	No. of Shares.
-------	------------	----------------

5th. These articles of association are entered into to enable the persons hereinbefore named to form a corporation for banking purposes, to be known as the _____, under the act of Assembly, entitled "An act for the incorporation and regulation of banks of discount and deposit," approved the 13th day of May, A. D. 1876, and the supplements thereto.

In witness whereof, we, the undersigned incorporators, have hereunto set our hands and affixed our seals this _____ day of _____, A. D. One thousand, nine hundred and _____.

(Seal)

(Seal)

(Seal)

1875. Certificate of Incorporation of a Bank.

To His Excellency, the Governor of the Commonwealth of Pennsylvania, the Attorney General, and the Commissioner of Banking:—

This is to certify that we, the undersigned citizens of the Commonwealth of Pennsylvania have associated ourselves together for the purpose of carrying on the business of banking, under the provisions of the General Assembly of the Commonwealth of Pennsylvania, approved the 13th day of May, A. D. 1876, entitled, "An act for the incorporation and regulation of banks of discount and deposit," and the supplements thereto, and, as provided therein, do hereby certify as follows:

1st. The name of the intended corporation is _____

2nd. The location or place where the business of the said corporation shall be carried on is in _____, county of _____, State of Pennsylvania.

3rd. The amount of capital stock shall be _____ thousand dollars (\$ _____), to be divided into _____ (_____) shares, of the par value of _____ dollars (\$ _____) per share.

4th. The names and places of residence of each of the shareholders, and the number of shares held by each, are as follows:

Name.	Residence.	No. of Shares.
-------	------------	----------------

5th. This certificate is made to enable the persons named herein to form a corporation for banking purposes, under the act of Assembly above referred to, and the supplements thereto.

Said corporation shall have power to adopt a corporate seal; have succession by the name hereinbefore mentioned, for the term of twenty years from the date of the granting of letters patent; by its corporate name it may make contracts, sue and be sued, complain, prosecute and defend in any court of law or equity, or before any magistrate as fully

as natural persons; it shall elect or appoint directors, appoint a president, vice-president, cashier and other officers, define their duties, require bonds of them, fixing the penalty thereof, dismiss any of said officers at pleasure, and appoint others to fill their places, and exercise under said act all such powers as shall be necessary to carry on the business of banking, by loaning money, discounting, selling, buying or negotiating promissory notes, drafts, coin and bullion, bills of exchange and all other written evidences of debt and specialties, and transact all such other business as shall appertain to the business of banking, and its board of directors shall have power to designate and regulate the manner in which its stock shall be transferred, directors elected or appointed, officers appointed, its property transferred and general business conducted, and all privileges granted by the said act of Assembly, hereinbefore mentioned, and the supplements thereto, to associations organized under it, shall be by it exercised and enjoyed.

In witness whereof, we, the undersigned incorporators have hereunto set our hands and seals this day of , A. D. one thousand nine hundred and

(Seal)

(Seal)

(Seal)

Commonwealth of Pennsylvania, }
County of } ss.

Before me, a in and for said county and State, personally came the above named , who acknowledged the foregoing certificate of incorporation to be their act and deed, and desired the same to be recorded as such.

Witness my hand and official seal this day of , A. D. 19 .
(Seal)

BANKING DEPARTMENT.

Harrisburg, Pa., , 19 .

Pursuant to the provisions of the second section of the Act of May 13, 1876, and section ten of the Act of February 11th, 1895, I hereby approve the name

.....
Commissioner of Banking.

1876. Application for Charter of a Building and Loan Association.

To the Governor of the Commonwealth of Pennsylvania:

SIR:—

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the purpose of organizing a building and loan association, and desiring that they may be incorporated, and that Let-

ters Patent may issue to them and their successors according to law, do hereby certify:

- 1st. The name of the proposed corporation is
- 2nd. Said corporation is formed for the purpose of accumulating a fund by the periodical contributions of the members thereof, and of safely investing the same.
- 3rd. The business of said corporation is to be transacted in
- 4th. Said corporation is to exist for the term of years.
- 5th. The name and residences of the subscribers and the number of shares subscribed for by each, are as follows:

Name.	Residence.	No. of shares.
-------	------------	----------------

6th. The number of directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
-------	------------

7th. The amount of capital stock of said corporation is \$, divided into shares, of the par value of \$.

8th. That in accordance with the provisions of an act, entitled, "An act relating to mutual saving fund, building and loan associations, regulating the mode of charging premiums, bonus or interest in advance, of withdrawals, of repayment and collection of loans, also restricting the power to levy excessive fines, and defining the rights and liabilities of married women stockholders and prescribing the non-application to these associations of the bonus tax and registry law of corporations," approved April 10th, 1879; the premium or bonus bid for the prior right to a loan shall

(Seal)
(Seal)
(Seal)

State of Pennsylvania, }
County of } ss.

Before me, in and for the county aforesaid, personally came the above named , who in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the day of , A. D. 19 .

.
.

State of Pennsylvania, }
County of } ss.

Personally appeared before me, this day of , A. D. 19 , who, being duly sworn according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me this day of , A. D. 19 .

}
}
}

APPLICATION OF
(Name of corporation.)

EXECUTIVE CHAMBER.

Harrisburg, , 19 .

To the Secretary of the Commonwealth:

Having examined the within application, and found it to be in proper form, and within the purposes of the class of corporations specified in section two of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29th, A. D. 1874, and an act entitled "An act relating to mutual saving fund, building and loan associations," etc., approved April 10, 1879, I hereby approve the same, and direct that Letters Patent issue according to law.

.
Governor.

SECRETARY'S OFFICE.

Pennsylvania, ss:

Enrolled in Charter Book, No. .

Page .

Witness my hand and Seal of Office, at Harris-
burg, this day of , A. D. 19 .

.
Secretary of the Commonwealth.

1877. Articles of Association of a Co-operative Association.

Articles of Association of the Co-operative Association.

We, the undersigned, do hereby form an association for the purpose of carrying on

under the provisions of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to encourage and authorize the formation of co-operative associations, productive and distributive, by farmers, mechanics, laborers or other persons," approved June 7, A. D. 1887, and for that purpose do make and sign these as our Articles of Association:

- 1st. The name of the said association is
- 2nd. The principal office of said association is to be located at
- 3rd. The purpose or object for which said association is formed is
- 4th. The capital stock of said association is *\$.
- 5th. The amount of each share of permanent stock is \$, and shall be paid for as follows, viz.:

*A definite amount of capital stock must be named.

And each share of ordinary stock \$, and shall be paid for as follows, viz.:

6th. There shall be \$ of capital stock paid in before said association shall commence business.

7th. Persons may become members on the following terms, viz.:

8th. The regular or quarterly meetings of the members shall be held on the of January, April, July and October of each year.

9th. (Here insert such other matters not repugnant to the Act of June 7, 1887, P. L., 365, as may be deemed proper and necessary.)

10th. The said association is to exist for the term of years.

11th. In witness whereof, the subscribers to these articles of association have hereunto subscribed their names, places of residence and the number of shares of each or either class of stock which each agrees to take.

Name.	Residence.	No. of Shares.
	Permanent Stock.	Ordinary Stock.

State of Pennsylvania, }
County of } ss:

Before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing at , in the county aforesaid, personally appeared

being five of the subscribers to the above and foregoing articles of association, and in due form of law acknowledged the same as their act and deed for the purposes therein set forth.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this day of , A. D. 19 .

.

(Seal)

Notary Public.

1878. Articles of Association of an Insurance Company.

To His EXCELLENCY

Governor of Pennsylvania.

SIR:—In compliance with an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "A supplement to an act entitled 'An act to establish an Insurance Department,' approved the first day of April, one thousand eight hundred and seventy-three, providing for the incorporation and regulation of insurance companies and relating to insurance agents and brokers, and to foreign insurance companies," approved the fourth day of May, A. D. 1876, the undersigned citizens of the Commonwealth of Pennsylvania, having associated themselves together for the purpose of forming a Company, and desiring that they may be incorporated, and that Letters Patent may issue to them and their successors, according to law, do hereby certify that they have entered into

an agreement for the purpose of forming said insurance company, on the following terms:

- 1st. The name of the proposed corporation is
- 2nd. The class of insurance for the transaction of which it is constituted is
- 3rd. The plan or principle upon which the business is to be conducted is
- 4th. The place in which it is to be established and located is
- 5th. Its capital stock is
- 6th. The general objects of the company are
- 7th. The proposed duration of the company is perpetual.
- 8th. The powers it proposes to have and exercise are, to have perpetual succession, to adopt and have a common seal, and the same to alter at pleasure, to sue and be sued, and in general to exercise the power of a corporate body, and make such contracts as may be necessary to carry out the object of insurance on the plan provided for in this agreement; to purchase or lease such real estate as may be necessary for a place of business and for the security of investments, and adopt such by-laws as may from time to time be deemed necessary.

9th. The names and residences of the subscribers who hereby bind themselves by this agreement, are as follows:

Name.

Residence.

10th. The following officers and directors have been chosen from the subscribers to serve until the first annual meeting of the insured, and until their successors are duly chosen and qualified:

. *President.*
 *Vice-President.*
 *Treasurer.*
 *Secretary.*

DIRECTORS :

.

State of Pennsylvania, } ss:
 County of

Before me, the subscriber, in and for said county, personally came the within named

who in due form of law acknowledged the within instrument of writing to

be their act and deed, and desired that the same might be recorded as such.
In witness whereof, I have hereunto set my hand and seal, this
day of A. D. 19 .

INSURANCE DEPARTMENT.

Harrisburg, , 19 .

The title of the company named in the within certificate, namely:

is hereby approved

.
Insurance Commissioner.

ATTORNEY GENERAL'S OFFICE.

Harrisburg, , 19 .

To HIS EXCELLENCY

Governor of Pennsylvania.

I do certify, that I have examined the above and foregoing certificate for
the incorporation of the Company, and find it in accordance with the
Act of May 1, 1876, and not inconsistent with the Constitution of this State
and of the United States, and the same is hereby approved.

.
Attorney General.

EXECUTIVE CHAMBER.

Harrisburg, , 19 .

Approved:

.
Governor.

SECRETARY'S OFFICE.

Pennsylvania, ss:

Enrolled in Charter Book, No. .

Page .

Witness my hand and Seal of Office, at Harris-
burg, this day of , A. D. 19 .

.
Secretary of the Commonwealth.

1879. Application for Charter of a Natural Gas Company.

To HIS EXCELLENCY

Governor of Pennsylvania.

SIR:—In compliance with the requirements of an act of the General
Assembly of the Commonwealth of Pennsylvania, entitled "An act to pro-
vide for the incorporation and regulation of natural gas companies," ap-
proved the 29th day of May, A. D. 1885, the undersigned,
of whom are citizens of Pennsylvania, having associated themselves to-

gether for the purpose of producing, dealing in, transporting, storing and supplying natural gas, and desiring that they may be incorporated, and that letters patent may be issued to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is

2nd. Said corporation is formed for the purpose of producing, dealing in, transporting, storing and supplying natural gas.

3rd. The place or places where natural gas is intended to be mined for and produced or received,

4th. The place or places where it is to be supplied to consumers,

5th. The general route of its pipe line or lines and branches is,

6th. The general office of said corporation is to be located in

7th. Said corporation is to exist for the term of years.

8th. The names and residences of the subscribers and the number of shares subscribed by each are as follows:

Name.	Residence.	No. of Shares.
-------	------------	----------------

9th. The number of Directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
-------	------------

10th. The amount of capital stock of said corporation is \$, divided into shares of the par value of \$, and \$, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are:

State of Pennsylvania, }
County of } ss:

Before me , in and for the county aforesaid, personally came the above named

who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified:

Witness my hand and seal of office, the day of , A. D. 19 .

Recorder of Deeds or Notary Public.

State of Pennsylvania, }
County of } ss:

Personally appeared before me this day of , A. D. 19 .

Sworn and subscribed before me,
 this day of , A. D. 19 .

Recorder of Deeds or Notary Public.

EXECUTIVE CHAMBER.

Having examined the within application, and found it to be in proper form, and within the purpose provided for in the act, entitled "An act to provide for the incorporation and regulation of Natural Gas Companies," approved May 29, A. D. 1885, I hereby approve the same, and direct that Letters Patent issue according to law.

Governor.

Pennsylvania, ss:

Enrolled in Natural Gas Charter Book, No. _____

Page

Witness my hand and Seal of Office, at Harris-
burg, this day of , A. D. 19 .

Secretary of Commonwealth.

1880. Articles of Association of a Street Railway Company.

Articles of Association of Street Railway Company.

We, the undersigned, do hereby form a company for the purpose of constructing, maintaining and operating a street railway for public use in the conveyance of passengers by power other than by locomotive, under the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and government of street railway companies in this Commonwealth," approved May 14, A. D. 1889, and the amendments thereto, and for that purpose do make and sign these as our articles of association:

- 1st. That the name of said company is Street Railway Company.
- 2nd. That the said company is to exist for the term of years.
- 3rd. That the length of said road will be, as near as may be, miles, and no track is laid under any existing charter and in constant daily

use for the transportation of passengers upon any street, highway, bridge or property on which this railway is proposed to be laid and constructed.

4th. That the streets, highways and bridges upon which the said railway is to be laid and constructed, and the circuit of the route are as follows, namely:

5th. That the said railway is to be operated by power.

6th. That the capital stock of said company is to be dollars, being at least six thousand dollars for every mile of road proposed to be constructed, and shall consist of shares of fifty dollars each.

7th. The affairs of the company shall be controlled by a President and a board of directors, and the following are the names and places of residence of those who shall manage its affairs until the first annual meeting and until others are chosen in their places:

Name.

Residence.

President.

} *Directors.*

In witness whereof, the subscribers to these articles of association have hereunto subscribed their names, places of residence and the number of shares of stock which each agrees to take.

Name.

Residence.

No. of Shares.

State of Pennsylvania, }
County of } ss:

Before me, the subscriber, a in and for said county and State, duly authorized to take acknowledgments of deeds, personally came

being three of the directors named in the foregoing articles of association, and in due form of law acknowledged the foregoing as their act and deed, for the purposes therein set forth.

In testimony whereof, I have hereunto set my hand and seal this day of A. D. 19 .

(Seal)

.

State of Pennsylvania, }
County of } ss:

Personally before me, a in and for the county and State aforesaid, came being three of the directors of the and named as such in the foregoing articles of association, who, being duly sworn, according to law, depose and say that the facts set forth in the foregoing articles of association are correct and true, and that at least two thousand dollars for every mile of road proposed to be made has been in good faith subscribed thereto, and ten per centum paid thereon in good faith and in cash to the directors named in said articles of association, and that it is intended in

Sworn to (or affirmed) and sub-
scribed before me, this
day of , A. D. 19 .

19 .

(Name of Company.)

Act of May 14, 1889, and the amendments thereto.

Harrisburg, Pa., , 19 .

• • • • •

Filed in the office of the Secretary of the Commonwealth, on the
day of , A. D. 19 .

• • • • •

Recorded in Articles of Association Book R. R., No. _____, Page, _____.

1881. Application for Charter of a Traction Company.

SIR :—

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of motor power companies for operating passenger railways by cables, electrical or other means," approved the twenty-second day of March, A. D. 1887, the undersigned, _____ of whom are citizens of Pennsylvania, having associated themselves together for the purpose of the construction and operation of motors and cables, or other machinery for supplying motive power to passenger railways, and the necessary apparatus for applying the same, and desiring that they may be

incorporated, and that Letters Patent may issue to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is

2nd. The place or places where its business is proposed to be conducted

and its general office is to be located at

3rd. Said corporation is to exist for the term of years.

4th. The names and residences of the subscribers, and the number of shares subscribed by each, are as follows:

Name.	Residence.	No. of Shares.
-------	------------	----------------

5th. The number of directors of said corporation is fixed at , and the names and residences of the directors who are chosen directors for the first year, are as follows:

Name.	Residence.
-------	------------

6th. The amount of the capital stock of said corporation is \$, divided into shares of the par value of \$ and \$, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are:

(Seal)

(Seal)

(Seal)

State of Pennsylvania, }
County of } ss.

Before me, a Notary Public, in and for the county aforesaid, personally came the above named who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the day of , A. D. 19 .

(Seal)

.

State of Pennsylvania, }
County of } ss.

Personally appeared before me, this day of , A. D. 19 , who, being duly sworn according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me,
the day and year aforesaid.

.

.

(Seal)

}
}
}

APPENDIX.
(ENDORSEMENTS.)

1425

EXECUTIVE CHAMBER.

Harrisburg, , 19 .

To the Secretary of the Commonwealth:

Having examined the within application, and found it to be in proper form, and within the purpose specified in the act, entitled "An act to provide for the incorporation and regulation of motor power companies for operating passenger railways by cables, electrical or other means," approved the twenty-second day of March, A. D. 1887, I hereby approve the same and direct that letters patent issue according to law.

.

Governor.

SECRETARY'S OFFICE.

Pennsylvania, ss:

Enrolled in Charter Book, No. .

Page .

Witness my hand and seal of office at Harrisburg, this day of , A. D. 19 .

.

Secretary of Commonwealth.

1882. Return of Increase of Capital Stock or Indebtedness—Without Waiver.

Company. Election return authorizing an increase of Resolutions of the Board of Directors.

, Pa., , 19 .

I hereby certify that the following resolutions were adopted by a majority of the entire board of directors of the Company at a meeting held at the principal office of the company on the day of , 19 .

"Resolved, That the of this company be increased from \$ to \$;

"Resolved, That a meeting of the stockholders be called to convene at the general office of this company on the day of , 19 , to take action on approval or disapproval of the proposed increase of the of this company, and that the secretary be and is hereby directed to give notice thereof as required by law."

Attest:

.

Secretary.

(Seal)

(Attach copy of notice.)

Commonwealth of Pennsylvania, }
County of } ss:

being duly sworn, or affirmed, doth depose and say, that he is of the Company; that a notice, of which the above is a copy, was published in the , a newspaper of general circulation, printed and published in the county of , Commonwealth of Pennsylvania, once a week, for sixty days, commencing on the day of , 19 .

Sworn to (or affirmed) and subscribed before me, this day of , A. D. 19 .
(Seal)

OATH OF JUDGES.

Commonwealth of Pennsylvania, }
County of } ss:

On this day of , A. D. 19 , personally appeared before me, a in and for the county aforesaid , , stockholders, duly appointed judges, by the board of directors of the Company, to conduct an election of said company to be held on the day of , 19 , who, being duly sworn, or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability, and true return make of the same.

. }
. } Judges.
. }

Sworn to (or affirmed) and subscribed before me, the day and year aforesaid.

(Seal)

JUDGES' RETURN.

We, the undersigned judges, appointed by the board of directors of the Company to conduct an election by the stockholders thereof, for or against an increase of the of the said company from \$ to \$, do hereby certify, that after being duly sworn, or affirmed, we held the said election on the day of , 19 , at the office of the said company, the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly given, and in due form and manner we received the votes of the stockholders of the said company in favor or against such increase. And at the said election there were voted in favor of such increase. shares, and against such increase shares, thereby evincing the consent of the persons or bodies corporate, holding the larger amount in value of the capital stock of the said company, to the said increase.

. }
. } Judges.
. }

(ENDORSEMENTS.)

(Name of corporation.)

ELECTION RETURN,

AUTHORIZING

Filed in the office of the Secretary of the Commonwealth, on the
day of , A. D. 19 .

Deputy Secretary of the Commonwealth.

Recorded in Miscellaneous Corporation Record Book, No. , page

The fee for filing this paper is \$30.00.

**1883. Return of Increase of Capital Stock or Indebtedness—With
Waiver.**

Company. Election Return authorizing an increase of

WAIVER OF NOTICE.

To the Directors of Company:—

We, the undersigned stockholders in the Company, who are holders of the stock of said company, to the amount set opposite our several names, request that you by resolution, declare that it is the desire of the corporation to increase its from \$ to \$, and that you, by resolution, call a meeting of the stockholders in the Company to be held on the day of , 19 , for the purpose of voting for or against such increase. And we do hereby waive the notice of such meeting of the stockholders, required to be given by the Seventh Section of the Sixteenth Article of the Constitution of the Commonwealth of Pennsylvania, and by the laws thereof, relating to the increase of capital stock or indebtedness of corporations, as well as by any by-law of the company requiring notice of such meeting to be given:—

Name	No. of Shares.	Name.	No. of Shares.
------	----------------	-------	----------------

Commonwealth of Pennsylvania, }
County of } ss:

being duly sworn, or affirmed, doth depose and say that he is the secretary of the Company, that the stock ledger of said Company is in his custody and under his control, and that the list of stockholders given in the above waiver of notice of a meeting to be held for the purpose of voting for or against the increase of the of said Company, is a complete list of such stockholders, and that they are the owners of the entire issue of stock of said company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

Secretary.

Company, the time and place fixed for holding the same, of which sixty days previous notice by publication was duly waived, and in due form and manner we received the votes of the stockholders of the said company in favor of or against such increase; and at the said election there were voted in favor of such increase shares, and against such increase shares, thereby evincing the consent of the persons or bodies corporate, holding the larger amount in value of the capital stock of the said company, to the said increase.

.

} Judges.

190 ,

(ENDORSEMENTS.)

(Name of the Company.)

ELECTION RETURN, WITH WAIVER

AUTHORIZING

Filed in the office of the Secretary of the Commonwealth, on the day of , A. D. 19 .

.
Deputy Secretary of the Commonwealth.

Recorded in Miscellaneous Corporation Record Book, No. , page .

The fee for filing this paper is \$35.00.

1884. President's or Treasurer's Return of Actual Increase or Decrease of Capital Stock or Indebtedness.

To the Hon.

Secretary of the Commonwealth.

This is to certify that by virtue of the consent of the stockholders of the Company, authorizing in the thereof, from \$ to \$, given at an election duly held for that purpose, on the day of , A. D. 19 , the of said company has been from \$ to \$, said additional being issued for .

(Seal)

State of Pennsylvania, }
County of } ss:

above named, being duly sworn, says the facts set forth in the above certificate are correct and true.

Sworn and subscribed before me this
day of , 19 .

.
.

This return must be made either by president or treasurer.

1885. Statement of Location of Office of Foreign Corporations.

To the Secretary of the Commonwealth of Pennsylvania:

SIR:—In pursuance of the act of Assembly of Pennsylvania, approved April 22, 1874, entitled "An act to prohibit foreign corporations from doing business in Pennsylvania, without having known places of business and authorized agents,"

I, president of , a foreign corporation or company do hereby certify:

That the title of said corporation or company is

(Must be full, correct corporate or company title.)

That it is incorporated or formed under the laws of the State of , with its principal office at

That the object of said corporation or company is

The office of said corporation or company in the Commonwealth of Pennsylvania has been established at No. street, in the county of , in said Commonwealth.

The name of its duly authorized agent to transact its business at said office is

(Must be an individual, not a firm or corporation.)

In testimony whereof, I have hereunto set my hand and caused the seal of said company to be affixed, this day of , A. D. 19 .

President or Secretary.

(Corporate Seal)

The fee for filing this statement is \$10.75.

1886. Acceptance of the Constitution and of the Act of April 22, 1874.

To HIS EXCELLENCY

Governor of Pennsylvania.

The Company, a corporation of the State of Pennsylvania, incorporated on day of , A. D. , under the provisions of an act of Assembly, entitled , and approved the day of , and having its principal place of business in the county of , hereby certifies under its corporate seal:

That, at a meeting of the stockholders of said company, held in pursuance of due and legal notice, at its office as aforesaid, on the day of , A. D. , the following resolutions were adopted:

Resolved, That this corporation accepts the provisions of the Constitution of Pennsylvania, adopted December 16, 1873; and the president and secretary are hereby authorized and directed to make, under the seal of the corporation, and to file in the office of the Secretary of the Commonwealth, the certificate required by law for the purpose aforesaid;

Resolved, That, in accordance with the provisions of the act of Assembly approved on the 29th day of April, A. D. 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," this corporation accepts the provisions of said act, and of the several supplements thereto, for the purpose of acquiring all the privileges, immunities and franchises of corporations of the second class, for the purpose of

Resolved, That the name of the corporation shall be the _____, and that its capital stock shall be \$ _____, divided into _____ shares, of the par value of \$ _____ each; and that the said corporation is to exist

Resolved, That the President and Secretary be authorized and directed to make, under the seal of the corporation, the certificate required by the act of Assembly, and to file the same with the Secretary of the Commonwealth, for the purpose of having letters patent issued to the said corporation.

In witness whereof, the said _____ Company, agreeably to the directions in the foregoing resolutions contained, has hereunto affixed its corporate and common seal, duly attested by its president and secretary, on this day of _____, A. D. 19 _____.

Company.

By

.....
President.

Attest:

Secretary.

(Acknowledgment.)

1887. Application for Amendment to Charter.

Office of the _____ Company.

_____, Pa., _____, 19 _____.

To HIS EXCELLENCY

Governor of the Commonwealth of Pennsylvania.

SIR:—

In accordance with the provisions of the "Corporation Amendment Act of 1883" (P. L., 1883, p. 122), the _____ Company hereby makes application for the improvement, amendment or alteration of its charter, and certifies under its corporate seal as follows, viz.:

1st. That it is a corporation created and existing under the "Corporation Act of 1874" (P. L., 1874, p. 73), and the supplements and amendments thereto, as shown by its charter and letters patent, dated _____, and was formed for the purpose of "supplying light, heat and power by electricity to the public in _____, and to such persons, partnerships and corporations residing therein and adjacent thereto as may desire the same."

2nd. That the character and object of the proposed improvement, amendment or alteration of the company's charter is as set forth in the following resolutions of the stockholders of the company, adopted at a meeting held pursuant to due and legal notice at the office of the company in , on , 19 , the persons or bodies corporate holding the larger amount in value of the capital stock of the corporation voting in favor thereof, viz.:

3d. That all reports required by the Auditor General of the Commonwealth have been filed by the said company and that all taxes due the Commonwealth by it have been paid.

Resolved, That it is the desire of the stockholders of this company to improve, amend or alter its charter, the character and object of such improvement, amendment or alteration being to make perpetual the term for which the said corporation is authorized to exist, instead of , as now limited by its charter, and that application shall be made to the Governor of the Commonwealth for such amendment, improvement or alteration of the company's charter, as authorized by the "Corporation Amendment Act of 1883," and that the president and secretary of the company be and they are hereby authorized and instructed to make, under the corporate seal, the certificate required by the said act, and present and produce the same to the Governor for his examination and approval.

In testimony whereof, the said Company has hereunto affixed its corporate seal, duly attested by its President and Secretary, this day of , A. D. 19 .

Company.

By

President.

Attest:

.

Secretary.

(Seal)

Commonwealth of Pennsylvania, } ss:
County of

Be it remembered, That on the day of , 19 , before me, Recorder of Deeds in and for said County, personally appeared , president, and , secretary of the above named corporation, the Company, who, being severally duly sworn, did depose and say that they were personally present at the execution of the above-written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above written instrument or certificate was duly signed, sealed and delivered by and as and for the act and deed of the said company, for the uses and purposes therein mentioned, by authority and direction of the persons and bodies corporate holding a majority in interest of the capital of the said company, and that the names of these deponents, subscribed to the said certificate as the president and the secretary of the said corporation, in attestation of the due execution and delivery of

the said certificate, are of these deponents' own proper and respective hand-writing.

.

Sworn to and subscribed before me the day and year above written.
Witness my hand and Seal of Office.

.

(Seal) *Recorder of Deeds.*

1888. Petition for Decree of Dissolution—Order for Publication of Notice, etc.

IN THE COURT OF COMMON PLEAS OF COUNTY.

To the Judges of the Said Court:—

The petition of the Company respectfully shows the Court that the said company is a corporation of the State of Pennsylvania, having been incorporated on the day of , A. D. 19 , under the provisions of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, A. D. 1874 (or whatever other act the company may have been formed under) for the purpose of (state the purpose for which incorporated).

That the operations of the company are carried on in , and its principal office and place of business is located in , county of , and State of Pennsylvania.

That at a meeting of the stockholders of the said company, duly held on the day of , A. D. 19 , it was resolved by a majority in interest of said stockholders to apply to the said court for a decree dissolving the said company.

That the said company has no debts or liabilities, and that all taxes due thereby to the Commonwealth have been fully paid into the State Treasury, as appears by the certificates of the Auditor General, State Treasurer and Attorney General, to that effect, herewith filed. (If the corporation be one not for profit, without capital stock, the State officials mentioned will have no tax accounts therewith, and will decline to give a certificate. In that event, substitute for the foregoing, from after the word "liabilities," the following: That the said company is a corporation without capital stock, not for profit, and therefore not subject to taxation for State purposes, and is not indebted to the Commonwealth of Pennsylvania for any taxes.)

Wherefore, the petitioner, showing to the court that the prayer of its petition may be granted without prejudice to the public welfare or the interests of the stockholders, prays the court for permission to surrender any and all powers contained in its charter, and that the court will make a decree for the dissolution of said corporation.

Company.

By

President.

(Corporate Seal)

Attest:

Secretary.

State of Pennsylvania, }
County of } ss:

C. D., Secretary of Company, the corporation petitioner, being duly sworn, says, That the statements made in the foregoing petition are true, as he verily believes; that he is the secretary of the said corporation, and was personally present at the signing and sealing of the within petition; that the seal thereto affixed is the common or corporate seal of the said company, and was so affixed thereto by order of said corporation, and that the names of , president, and of this deponent, as secretary of said corporation, subscribed to said petition in attestation thereof, are in proper form and in the respective handwritings of the said and of this deponent.

Sworn and subscribed before me,
this day of , A. D. 19 .
Witness my hand and seal.

.
(Seal)

ORDER FOR PUBLICATION.

And now, to wit, , 19 , the foregoing petition having been presented and filed in open court, upon consideration thereof and on motion of , Esq., solicitor for the corporation petitioner, it is ordered and decreed that the said corporation be heard on the , day of , at o'clock, M., and that notice of such petition and application, and of the hearing thereupon, be published in two newspapers published in the county of (name of county in which the principal operations of the company are carried on) and two newspapers published in the county of (name of the county in which the principal office of the company is located. Where the principal office is located in the same county in which the principal operations of the company are conducted, publication need be made in that county only) publication to be made weekly in each paper for the period of three weeks.

FORM OF NOTICE.

Notice is hereby given that on the day of , 19 , the Company filed in the Court of Common Pleas for county, its petition praying for a decree of dissolution, and that a hearing upon said application for dissolution has been fixed by said court for , 19 , at o'clock, when and where all persons interested may attend and show cause against the granting of the prayer of the said petitioner, if they so desire.

.
Solicitor for Petitioner.

(Proof of publication to be made as in preceding forms.)

IN THE COURT OF COMMON PLEAS FOR THE COUNTY OF

And now, to wit, on this day of , A. D. 19 , the said petition having been presented and read, and it appearing from affidavits duly filed, that, according to the order of this court heretofore made, notice of the said petition and application has been given by publication thereof in two newspapers published in the county in which the principal operations of the corporation petitioner are conducted, and also in two newspapers published in the county in which the principal office of said corporation is located; (If the principal office is located in the same county where the principal operations are conducted, substitute: In two newspapers published in the county where the principal operations of the corporation are conducted, and its principal office is located) and it further appearing from the certificate of the Auditor General, State Treasurer and Attorney General, duly filed, that the petitioner has paid all taxes due by it to the Commonwealth of Pennsylvania (if the corporation be not for profit, and without capital stock, substitute; and it further appearing that the corporation petitioner is a corporation without capital stock, not for profit, and not, therefore, subject to taxation for State purposes, and is not indebted to the Commonwealth of Pennsylvania for any taxes), and the court being satisfied that the prayer of said petitioner may be granted without prejudice to the public welfare or the interests of the stockholders, it is ordered, adjudged and decreed that the said corporation, the Company, be and the same is hereby dissolved, and that all and singular its franchises, privileges and powers be and are hereby extinguished forever. Provided, that this decree shall not go into effect until a certified copy thereof be filed and recorded in the office of the Secretary of the Commonwealth.

Agreement for the merger and consolidation of the _____ Company into
and with the _____ Company, forming one corporation to be known as the
_____ Company.

ARTICLES OF AGREEMENT, made this day of 19 , between
the Company, party of the first part, and the Company, party
of the second part.

WHEREAS, The _____ **Company, party of the first part, is a corporation of the State of Pennsylvania, chartered (here set forth the act under which chartered, the purpose for which chartered, date of incorporation, any amendments to charter, and whether the company has accepted the provisions of the Act of April 29, 1874, or not), and is now engaged in the business authorized by its charter; and**

WHEREAS, The Company is a corporation of the State of Pennsylvania (proceed as in the case of the corporation first named), and

WHEREAS, The Company, party of the first part, has an authorized capital stock of () shares of the par value of dollars (\$) each, or dollars (\$) in the aggregate, of which shares () have been fully paid and issued, and are now outstanding; and

WHEREAS, (a similar statement as to the party of the second part); and

WHEREAS, The Company, party of the first part, has an outstanding bonded indebtedness, secured by first mortgage upon its property, assets and franchises, amounting at the present time to dollars (\$); and

WHEREAS, All the shares of capital stock of the Company, party of the second part, except so far as are necessary to be owned by other persons, in order to qualify them to serve as directors of said company, and all of the bonds and other evidences of indebtedness of said company are now owned by the Company, party of the first part (omit this paragraph or modify the same to agree with the facts in the case); and

WHEREAS, The said Company, party of the second part, is authorized by law to sell to the Company, party of the first part, its franchises and all its property, real, personal and mixed, and the Company, party of the first part is authorized to purchase the same, and the said companies are authorized by law to merge and consolidate and become one corporation, and it is believed that such purchase and sale and such merger and consolidation will be beneficial to the stockholders of each of said companies, and to the general public;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That the said Company, party of the second part, for and in consideration of the sum of One Dollar (\$1.00) and for other good and valuable considerations, shall and does hereby agree to sell, assign, dispose of, convey and transfer to the Company, party of the first part, all its franchises and all of its property, real, personal and mixed, and the said Company, party of the first part, hereby agrees to purchase the same, and that the said two corporations, the Company, and the Company, do, and each for itself does, hereby agree that the said Company, party of the second part, shall be merged and consolidated into and with the Company, party of the first part, forming one corporation, under the name of the Company; and the said parties do hereby prescribe the following terms and conditions for the said merger and consolidation, and the mode of carrying the same into effect:

Article I. The name of the consolidated company shall be the Company.

Article II. Unless and until otherwise prescribed by its by-laws, duly adopted, the directors of the said corporation shall be in number, and the officers thereof shall consist of a president (who shall also be a director), a vice-president, a secretary, and a treasurer, and such other officers as the board of directors may from time to time deem necessary.

The names and places of residence of those who shall be the first directors of said corporation, to serve until their successors are duly elected and qualified, are as follows:

Name.	Place of Residence.
.....
.....

The following named persons, who reside, respectively, at the places set opposite to their names, shall be the first officers of the said corporation, to serve until their successors are duly elected or appointed and qualified, viz.:

Name.	Office.	Place of Residence.
.....
.....

Article III. The directors of the said consolidated corporation shall be chosen annually by the stockholders, at an election to be conducted in accordance with the provisions of the Constitution and laws of Pennsylvania, and such by-laws, not inconsistent therewith, as may be adopted by the said corporation, or as may have been heretofore adopted by the party of the first part, the said directors to continue in office until others are duly elected and qualified in their respective places. At each annual election of directors, when the result thereof is ascertained, or as soon thereafter as may be, the newly elected board shall meet and choose from their number one person to be president, one person to be vice-president, one person to be secretary, and one person to be treasurer, and all other necessary officers or agents, who shall serve for one year and until other persons are chosen in their places.

Article IV. The authorized capital stock of the consolidated corporation shall be dollars (\$), divided into shares (), of the par value of dollars (\$) each, all of which shall be presently issued. The certificates of the Company, party of the first part, now outstanding, to the amount of dollars (\$) shall be treated and considered as certificates of capital stock of the consolidated corporation; and there shall be issued by said consolidated corporation to the holders of the capital stock of the Company, party of the second part, shares of the capital stock of the par value of dollars (\$), aggregating dollars (\$), in exchange for the capital stock of the said Company, party of the second part, consisting of () shares of the par value of dollars (\$), or dollars (\$) in the aggregate, which shares of the consolidated company so exchanged shall be divided amongst the shareholders of the Company, party of the second part, in proportion to their respective holdings, the holder of each share of the capital stock of the said Company, to receive an equal amount of the capital stock of the consolidated corporation. Upon the issuance of the shares of the consolidated corpora-

tion, the shares of the Company, party of the second part, shall be surrendered and cancelled.

Article V. It is understood and agreed that the bonds of the party of the second part, amounting to dollars (\$), now owned by the party of the first part, shall be treated as discharged and paid, and the same shall be cancelled and shall hereafter have no force or effect whatever. (Omit or modify, to cover the facts in the case.)

Article VI. It is understood and agreed that the present Company, party of the first part, has an outstanding indebtedness of dollars (\$), represented by bonds, secured by a mortgage upon its property and franchises, and that it is also indebted, etc. which indebtedness was incurred, etc. (Omit or modify to suit the facts in the case.)

It is further understood and agreed that the stockholders of the present Company, party of the first part, have authorized an increase in the company's bonded indebtedness to the amount of dollars (\$); that the present outstanding bonds of the party of the first part, etc., issued etc., shall be called in and exchanged or cancelled, and that there shall be issued in lieu thereof to the present holders of the said bonds, dollars (\$) of the bonds of the consolidated corporation, authorized as aforesaid; the said new bonds to be dated , 19 , to be redeemable after five years and payable absolutely after years, to bear interest at the rate of per centum per annum, both principal and interest to be payable in gold coin of the United States of the present standard of weight and fineness, and is to be secured by a first mortgage upon the property, assets and franchises of the consolidated corporation. (Omit or modify to suit the facts.)

Article VII. It shall not be deemed necessary for the consolidated corporation to provide new stock, transfer or other books necessary for the correct and convenient transaction of its business, so far as such books have already been provided and are now in use by the present Company, party of the first part, but the books so in use by the said company may be continued and used as the books of the consolidated corporation, which shall in all respects be treated as the continuance of the present Company, party of the first part, with the Company, party of the second part merged into and consolidated with it.

Article VIII. The officers of the Company, party of the second part, shall immediately upon the ratification of this agreement by the stockholders of the company, and the filing of the same in the office of the Secretary of the Commonwealth, and the issuance of Letters Patent thereon by the Governor, cause all money on deposit to the credit of the company, or held by them, to be paid over to the treasurer herein named of the Company, and all books, vouchers, records, instruments of title, cash, evidences of debt, contracts and documents pertaining to the business or property of the Company, party of the second part, shall, without delay be delivered to the proper officers herein named of the Company, and the said books, records, vouchers and papers of the said company, as well as the books, vouchers, records and papers of the Company, shall be deemed and taken, so far as necessary, to be the books, vouchers, records and papers of the said consolidated corporation.

Article IX. Upon the making and perfecting of this agreement, and upon its adoption and ratification by not less than a majority in amount of the entire capital stock of each of the parties hereto, and upon the filing of the same or a copy thereof in the office of the Secretary of the Commonwealth of Pennsylvania, and the issuance of Letters Patent thereon by the Governor, as prescribed by law, the parties hereto shall be deemed and taken to be one corporation by the name provided in this agreement, and shall possess all the corporate rights, powers, privileges, exemptions, and franchises of each and every of the said corporations so merged and consolidated.

Upon the consummation of said act of merger and consolidation, all and singular the rights, powers, privileges, exemptions and franchises of each of said corporations, parties hereto, and all the property, real, personal and mixed, and all debts due of whatever kind to either of said companies, as well as stock subscriptions and other things in action, belonging to either or any of said companies, shall be deemed and taken to be transferred to and vested in the Company, without further act ordered; and all real estate, buildings, gas holders, machinery, piping, boilers, engines, poles, wire, dynamos, tools, implements, motors, leases, leasehold interest, rights of way, contracts, claims, demands and property of every description, name and nature, belonging to either of said corporations, and the right, title, equity, or interest which either of them may have, at present, in future or contingent, in any property or credit, with all appurtenances, shall, wheresoever the same may be situated, be held, owned and controlled by the Company, its successors and assigns, as fully and completely to all intents and purposes as the said respective parties hereto do or can now hold, own, use, enjoy or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said company.

Article X. The rights of creditors, and liens upon the property of either of said parties hereto, shall be preserved unimpaired, and the said property and franchises of each of said corporations shall pass to, and be vested in the said Company, as such consolidated corporation, subject to all just debts, guarantees, liabilities and obligations, existing against either of the said corporations, parties hereto, at the time of the taking of effect of this agreement, all of which said debts, guarantees, liabilities and obligations shall be and are hereby assumed, and the same shall be provided for, paid and discharged by the said consolidated corporation; and all contracts and agreements existing between either of the corporations, parties hereto, shall be carried out and performed by the said consolidated corporation.

Article XI. The officers and employes of the companies parties hereto, except as herein provided, shall continue to be officers and employes of the said consolidated corporation until their successors are duly elected or appointed by the proper authorities of the said consolidated corporation.

Article XII. The principal office and place of business of the consolidated corporation shall be at , in the county of , and State of Pennsylvania.

IN WITNESS WHEREOF, and as signifying the agreement of their respect-

• • • • •

(Corporate Seal)

State of Pennsylvania, } ss:
County of }

A rectangular array of dots arranged in 3 rows and 12 columns. Each row contains 12 dots, and there are 3 rows in total.

• • • • •

(Notarial Seal)

, Pa., , 19 .

That a meeting of the stockholders of the said Company, duly called, was this day held at the company's office in _____, _____ county, Pennsylvania, and that in pursuance of our above subscribed oaths we did conduct such election; that at the time of holding such election the capital stock of the company, as shown by the sworn return furnished us by the Secretary of the Company, consisted of () shares; all of which shares have been issued; that there was offered at the said meeting the following resolution, viz.:

That we thereupon proceeded to hold an election for or against the adoption of said resolution.

Witness our hands and seals this day of A. D. 19 .
[L. S.]
[L. S.]
[L. S.]

1891. Form for Securing the Powers of Trust Companies by Title Insurance Companies.

Governor of Pennsylvania.

Resolved, That this corporation accepts the provisions of the act of General Assembly, entitled "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, A. D. 1874, amending the twenty-ninth section of said act so as to provide for the further regulation of and granting additional powers to all corporations now or hereafter incorporated under the provisions of said act, for the insurance of owners of real estate, mortgagees and others interested in real estate, from loss by reason of defective titles, liens and incumbrances,' approved the ninth day of May, A. D. 1889," and the supplements and amendments thereto.

In witness whereof the said Company, agreeably to the directions in the foregoing resolutions contained, has hereunto affixed its corporate

and common seal, duly attested by its president and secretary, on this
day of , A. D. 19 .

Company.

By

President.

Attest:

Secretary.

State of Pennsylvania, }
County of } ss:

, being first duly sworn, according to law, deposes and says that he is the treasurer of the above named company, and that the said company has a paid-up capital of (\$125,000 or more).

.

Sworn and subscribed to before me,
this day of .

1892. Form of Appeal to the Court of Common Pleas of Dauphin County From Settlements for State Taxes Made by the Accounting Officers.

In the matter of the account for tax on for the year ended , amounting to \$, settled against the Company by the Auditor General of Pennsylvania, on the day of , 19 , and approved by the State Treasurer on the day of , 19 , a copy of said account being hereunto attached:

The said Company hereby appeals from said settlement of its account to the Court of Common Pleas of Dauphin County, and files the following specifications of objections thereto, agreeably to the provisions of the act of Assembly in such cases made and provided.

(Here insert specifications of said objections.)

1893. Form of Bond to be Filed With Such Appeal.

(Title of Cause.)

KNOW ALL MEN BY THESE PRESENTS, That we, the Company, and E. F. and H. G., all of the county of , are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of dollars, lawful money of the United States, to be paid to the said Commonwealth of Pennsylvania, to which payment, well and truly to be made, and done, we bind ourselves and each of us, his heirs, executors, administrators and successors, and every of them, firmly by these presents. Sealed with our seals, and dated this day of , 19 .

Whereas, the above bounden Company hath appealed to the Court of Common Pleas of Dauphin County from a settlement made against the said company by the Auditor General of Pennsylvania on the day of , 19 , and approved by the State Treasurer on the day of , 19 , for tax on , for the year , to the amount of \$. Now the condition of this obligation is such that if the said

Company shall prosecute such appeal with effect, and pay all costs and charges which the court of arbitrators shall award, and also pay any sum of money which shall appear to be due by it to the Commonwealth of Pennsylvania, then this obligation to be void, otherwise to be and remain in full force and effect.

(This bond must be filed within ten days from the date of filing the appeal. The sureties should be approved by a judge of the Court of Common Pleas for the county wherein they reside. The Court of Common Pleas of Dauphin county will accept such approval, and itself approve of the sureties.)

1894. Certificate for the Recharter of a Corporation.

(Follow the form appropriate for use in the original incorporation of a corporation of the same kind, to the end of Paragraph 7, and then insert) :—

8. This application is for the renewal of the former charter of the Company, incorporated on the day of , A. D. , under the provisions of an act of Assembly, entitled , approved the day of , A. D. .

It is hereby certified that at a meeting of the aforesaid Company, held at the principal office thereof, at , on the day of , 19 , after due and legal notice thereof, a majority in interest of the stockholders of said company voted to give their consent to an application for a recharter of said company.

The financial condition of said corporation, at the date hereof, is as follows:—

Paid in capital stock .

Funded debt, .

Floating debt, .

Estimated value of property and cash assets, .

The said company at the said meeting, held as aforesaid, by a vote of its stockholders expressly accepted the provisions of the Constitution of this State and those of the General Corporation Act of April 29, 1874, and expressly surrendered all franchises and privileges conferred upon said corporation by its original charter, which are not enjoyed by corporations of its class under the said act or the general laws of this Commonwealth.

President.

Attest:

Secretary.

(Corporate Seal)

1895. Certificate of Reorganization by Purchasers at Judicial Sale.

To the Secretary of the Commonwealth of Pennsylvania:

Whereas, The real, personal and mixed property, and the corporate franchises, rights and privileges of the Company, a corporation formed and existing under and by virtue of the provisions of an act of the General Assembly, entitled , approved the day of , were sold

by the sheriff of _____ County, at judicial sale, on the _____ day of _____, 19____, as more fully and at large appears by reference to the records of the Court of Common Pleas of said county to No. _____, _____ Term, 19____, and the conveyance of said sheriff acknowledged in open court on the _____ day of _____, 19____.

Now, therefore, I do hereby certify, agreeably to the provisions of an act entitled "A supplement to an act, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads,' approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-one, extending the provisions of said act to coal, iron, steel, lumber, or oil or mining, manufacturing, transportation and telegraph companies in this Commonwealth," approved the 25th day of May, A. D. 1878, and the supplements thereto, that the persons for or on whose account the said property, corporate rights and privileges and franchises were purchased, as aforesaid, did meet on the _____ day of _____, 19____, at _____, within the county of _____, State of Pennsylvania, after public notice of the time and place of such meeting, made agreeably to the provisions of Section 1, of the aforesaid Act of May 25, 1878, as amended by Section 1, of the Act of May 31, 1887, and proceeded to organize and form a new corporation, under the laws of the Commonwealth of Pennsylvania.

That the name adopted by the said corporation is _____.

That the amount of capital stock which the said corporation is authorized to have is fixed at \$ _____, divided into _____ shares, of the par value of \$ _____ each.

That _____ shares of the par value of \$ _____ each, making \$ _____, aggregating \$ _____, of the capital stock of said corporation, are to be deemed and taken to be full paid stock, and are to be issued to the following named persons, for and on whose behalf said property, franchises, privileges and rights were purchased, in payment for their respective interests in the same, viz.:

Name.	No. of Shares.	Value of Shares.
That the name of the president of said corporation, duly elected to serve until _____, is _____.		
That the names of the directors of said corporation, duly elected to serve until _____, are as follows:		
Names.	Residences.	
In testimony whereof, I have hereunto set my hand and affixed the common and corporate seal of said company, this _____ day of _____, A. D. 19____.		
<i>President of the Company.</i>		
(Corporate Seal)		
Attest:		
_____, <i>Secretary.</i>		
(Acknowledgment).		

To the Secretary of the Commonwealth:

The Company, a corporation incorporated under the provisions of an act of the General Assembly, entitled, "An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," approved April 8, A. D. 1861, and the several supplements thereto, hereby certifies under its corporate seal:

That at a meeting of the board of directors of said corporation, held at the principal office of said company, on the day of , 19 , after due and legal notice thereof, the following resolutions were adopted:

Resolved, That this corporation accepts the provisions of Article XVI of the Constitution of Pennsylvania, adopted on the 16th day of December, 1873.

Resolved, That the president and secretary be, and they are hereby directed to execute, under the corporate seal, a certificate of the acceptance of said Article by this company, and to file the same in the office of the Secretary of the Commonwealth.

That in pursuance of said foregoing resolutions the said Company hereby accepts the provisions of said Article XVI of the Constitution of this Commonwealth, adopted on the 16th day of December, 1873.

In testimony whereof the corporate and common seal of the said corporation has been hereunto affixed this day of , A. D. 19 .

, *President.*

Attest:

, *Secretary.*

(Seal)

(Acknowledgment).

1896. Extension of Route of Street Railway Company.

MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE STREET RAILWAY COMPANY.

A meeting of the stockholders of the street railway was duly called, convened and held at the general office of the said company at , on the day of , 19 , at o'clock, M.

Present:

.
.
.

Constituting all of the stockholders of record, the same being the owners of all the shares of the capital stock of the company.

The meeting was called to order by Mr. , President.

It is hereby certified that the following branch or extension of the railway of the said company was adopted and authorized by virtue of the following resolutions, which were passed by a unanimous vote of the stockholders of the entire capital stock of the said company at the said meeting, each of the stockholders being present in person, and the following is

a correct copy of the minutes of said company, containing said authority, viz.:

"WHEREAS, the street railway company, a corporation formed and existing under the Act of General Assembly of the Commonwealth of Pennsylvania, entitled 'An act to provide for the incorporation and regulation of street railway companies in this Commonwealth,' approved the 14th day of May, A. D. 1889, and the several supplements and amendments thereto, deems it necessary for the purpose of increasing its business and accommodating the travel of the public to construct an extension or branch of its railway; and

"WHEREAS, no track is laid or authorized to be laid under any existing charter on any street, highway or bridge, on which said extension or branch is proposed to be constructed; now, therefore, be it

"Resolved, That the following branch or extension of said street railway company be and the same is hereby adopted and authorized, with double or single tracks, and with the necessary sidings, turnouts, switches and connections over, along and upon the following streets, highways and bridges to wit.:

(Insert description of route of extension.)

"Resolved, That the President and Secretary of this company be and they are hereby authorized and directed to execute such writings and to do such acts and things as may be necessary to the end that a duly certified copy of these minutes showing the resolutions of its stockholders in the matter of the adoption of the extension aforesaid shall be filed in the office of the Secretary of the Commonwealth of Pennsylvania, and to the end that the same shall be forthwith presented to the Governor for his approval, and if approved by the Governor that a certificate may be issued by the Secretary of the Commonwealth showing that the said branch or extension has been duly authorized and that the same shall, thereupon, be duly recorded in the County of , State of Pennsylvania, in accordance with the provisions of the Act of Assembly in such case made and provided."

The Board of Directors of the street railway company has, by resolution, duly appointed to acknowledge all deeds, mortgages and all such recordable instruments as may be duly executed by the proper officers of the company, and the said street railway company does hereby constitute and appoint to be its attorney, for and in its name and as and for its corporate act and deed to acknowledge this certified copy of resolutions of stockholders before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In witness whereof the street railway company has caused this certified copy of the resolutions of its stockholders to be signed by its

President, attested by its Secretary and the seal of the corporation to be affixed hereto, this day of , A. D. 19 .

Signed (Name of Company.)

(Seal)

By
President.

Attested:

.
Secretary.

Commonwealth of Pennsylvania, }
County of } ss:

I hereby certify that on this day of , A. D. 19 , before me a Notary Public in and for the Commonwealth of Pennsylvania, residing in the , personally appeared , the Attorney named in the foregoing certified instrument, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said instrument to be the act and deed of the said street railway company.

Witness my hand and Notarial Seal the day and year aforesaid.

.
Notary Public.

(Seal)

Commonwealth of Pennsylvania, }
County of } ss:

Before me, a personally came and who being duly sworn or affirmed say that they are respectively, the President and Secretary of the street railway company; that the foregoing branches or extensions are within the general scope of the original charter of the said street railway company and do not conflict with any rights previously granted and in existence.

.
President.

.
Secretary.

Sworn, or affirmed to and subscribed before me this day of ,
A. D. 19 .

.
Notary Public.

(Endorsement.)

EXECUTIVE DEPARTMENT.

Office of the Governor.

Harrisburg, Pa., day of, 19 .

Approved:

.
Governor.

Filed in the Office of the Secretary of the Commonwealth on the
day of , 19 .

1897. Abandonment of Portion of Route by a Street Railway Company.

CERTIFICATE OF PROCEEDINGS AT MEETING OF THE BOARD OF DIRECTORS.

It is hereby certified that the following is a true and correct copy of the minutes of a meeting of the Board of Directors of the Company, held at the principal office of said Company, at , on the day of , 19 , after due and legal notice thereof.

Upon motion made and seconded the following preamble and resolutions were offered, and after consideration, were adopted by vote of said Board of Directors.

Whereas, the Company is a corporation formed and existing under the provisions of an Act of the General Assembly of Pennsylvania, entitled, "An Act to provide for the incorporation and government of street railway companies in this Commonwealth," approved the 14th day of May, A. D. 1889, and the several supplements thereto; and

Whereas, this company deems it advisable to abandon a part of its road, or chartered route without prejudice to its right to operate or to complete and operate the remaining portions of its railway; and

Whereas, this company, with the approval of a majority in value of its stockholders, under the provisions of the aforesaid Act of May 14, 1889, and the supplements thereto, is authorized and empowered to make and effect such abandonment; and

Whereas, The holders of a majority in value of the shares of stock of said company, at their meeting held on the day of A. D. 19 , consented and gave their approval to the abandonment hereinafter authorized and made; now, therefore

Be it and it is hereby resolved, that the Company, incorporated as aforesaid, abandon that part of its road or chartered route, as follows: Beginning, etc.

In witness whereof, the said company has caused its corporate seal to be hereunto affixed, duly attested, this day of , A. D. 19 .

The Company,
By

Attest:

, *President.*

Secretary.

(Corporate Seal).

CERTIFICATE OF PROCEEDINGS AT STOCKHOLDERS' MEETING.

It is hereby certified that the following is a true and correct copy of the minutes of a meeting of the stockholders of the Company, held at the principal office of said corporations, at , on the day of , A. D. 19 , after due and legal notice given.

Upon motion made and seconded the following preamble and resolutions

were adopted by the affirmative vote of a majority in interest of the stockholders of said company:

Whereas, The Company, is a corporation formed and existing under the provisions of an Act of the General Assembly of Pennsylvania, entitled, "An act to provide for the incorporation and government of street railway companies in this Commonwealth," approved the 14th day of May, A. D. 1880, and the several supplements thereto; and

Whereas, This company deems it advisable to abandon a part of its road or chartered route, without prejudice to its right to operate or to complete and operate the remaining portions of its railway; and

Whereas, This company, with the approval of a majority in value of its stockholders under the provisions of the aforesaid Act of May 14, 1889, and the supplements thereto, is authorized and empowered to make and effect such abandonment; and

Whereas, A majority in value of the stockholders of all the capital stock of this company are here present; now, therefore

Be it and it is hereby resolved, that the stockholders present, being a majority in value of all of the capital stock of the said company, do consent and agree to the abandonment of that portion of the road or chartered route of said company, described as follows:

Beginning, etc.

In witness whereof, the said company has caused its corporate seal to be hereunto affixed, duly attested, this day of , A. D. 19 .

The Company.

Attest :

By *President.*

Secretary.

(Corporate Seal).

State of Pennsylvania, } ss:
County of }

Be it remembered that, upon this day of , 19 , personally appeared before me, a , in and for said county, Secretary of the Company, who, being duly sworn according to law, deposes and says that he was personally present and saw the common and corporate seal of the above-named company affixed to the foregoing certificate; that the seal so affixed is the common or corporate seal of said company, and was so affixed by authority of the said corporation for the use and purposes therein named; that the above-named is the president of said company, and did sign the said certificate as such in the presence of the said deponent; that this deponent is the secretary of the said association, and did sign said certificate as such, and that the signature of the said , president of the said company, in attestation of the due execution of the said certificate, and of the said secretary, are in their own proper handwriting. Acknowledged, sworn and subscribed before me the day and year above written. Witness my hand and notarial seal.

Notary Public.

(Notarial Seal).

1898. Form of By-Laws.**BY-LAWS OF THE COMPANY.****ARTICLE 1.**

3

Section 1. The Board of Directors shall consist of persons to be elected annually. If a vacancy occur in the Board from any cause, the remaining Directors shall have power to elect Directors to fill such vacancy until the next succeeding election, or until a successor be duly elected or qualified.

Section 2. The Board of Directors shall hold meetings at such times and places as may to them seem necessary or advisable, and they shall have power to delegate from time to time such authority as they may deem necessary to any one or more members of the Board as a committee in order that the business of the company may be transacted with promptness and dispatch. The President shall be ex-officio a member of all standing committees. 2

Section 3. The stated meetings of the Board shall be held on the of each month at such time and place as the Board may from time to time designate, and may be adjourned by the members present to any other time and place. Special meetings may be called at any time by the President or any 2 members of the Board of Directors. A majority of the directors shall constitute a quorum for the transaction of business.

Section 4. The Board of Directors shall have the right to adopt such rules and regulations for the conduct of business and from time to time alter and amend the same as to them may seem proper.

Section 5. The Board of Directors shall have and exercise all the powers or authority granted by law to the company, except in such matters as may be specifically excepted by the charter or By-Laws, and they are empowered to devise and carry into execution any agreements and contracts, and to do all things lawful which, in their opinion, are expedient to be done in the management of the company.

ARTICLE 2.**OFFICERS.**

Section 1. The officers of the company to be elected by the Board of Directors shall consist of a President, a Treasurer, a Secretary and .

Section 2. The Board of Directors shall appoint the subordinate officers and agents of the company, to hold their offices subject to the pleasure of said Board, prescribe their compensations and take from them such bonds, with security, as they may see fit.

ARTICLE 3.**DUTIES OF THE PRESIDENT.**

Section 1. The President shall preside at all meetings of the Board of Directors, preserve order, regulate debate according to parliamentary

rules, and appoint all committees as recommended by the Board. In his absence or inability to act, a president pro tem. may be appointed to discharge the duties of the President. The President shall have general supervision of the affairs of the company and attend generally to its executive business and shall have full authority to appoint or discharge any agent or employe and shall prescribe the duties of officers and employes when not otherwise provided. He shall also sign all cheques drawn upon the funds of the corporation.

ARTICLE 4.

DUTIES OF THE SECRETARY.

Section 1. The Secretary shall, under the direction of the President, be present at all meetings of the Board, keep a record of proceedings for preservation in a suitable book, notify the stockholders and members of the Board of Directors of all regular meetings, have charge of the corporate seal and of the books, maps, leases and papers of the company, have charge of the transfers of stock, the registering of bonds and of the executing and recording of all deeds, etc., and perform all the duties which are customary and incident to the office of Secretary of like companies.

ARTICLE 5.

DUTIES OF THE TREASURER.

Section 1. The Treasurer shall, under the direction of the President, have general charge of the funds of the company and make such reports of the receipts and disbursements in such form and manner as the Board may direct.

ARTICLE 6.

ELECTIONS.

Section 1. All elections for officers shall be by ballot in the manner prescribed by law.

ARTICLE 7.

PRINCIPAL OFFICE.

Section 1. The principal office of the company shall be at _____ in the _____ of _____ and State of _____, but the Board of Directors may establish a branch office or offices at any other place or places in the State of _____ or elsewhere.

ARTICLE 8.

MEETING OF THE STOCKHOLDERS.

Section 1. The annual meeting for the election of Directors shall be held at the principal office of the company on the _____ day of _____ at _____ o'clock, _____ M., in every year, and the Directors elected shall or-

ganize as soon as possible thereafter and hold their offices until their successors are elected and qualified. The first annual meeting shall be held on the in .

Section 2. Special meetings of the stockholders may be called at any time by the President, or a majority of the Board of Directors. At least days notice shall be given by the Secretary of the time and place of holding any special meeting of the stockholders in such manner as the Board may direct.

Section 3. The holders of a majority of the stock issued shall constitute a quorum for the transaction of business at any regular or special meeting of the stockholders. If no quorum be present at any meeting so called, a less number may meet and adjourn from time to time until a quorum be present.

Section 4. Stockholders may vote at any meeting, either in person or by proxy, but all proxies shall be in writing and be executed conformably with the laws of Pennsylvania.

ARTICLE 9.

CERTIFICATES OF STOCK.

Section 1. Certificates of stock shall be issued to the stockholders and transfers of them be made by the Secretary when required. The certificates shall be signed by the , authenticated by the seal of the company and countersigned by the Treasurer. A transfer agency of the stock may be constituted by the Board of Directors. Transfers shall be made in person, or by power of attorney on the books of the company on surrender of the certificates. All certificates shall be in such form as may be adopted by the stockholders and the stockholders shall have full authority to change and modify such form from time to time.

ARTICLE 10.

AMENDMENTS.

Section 1. Amendments to these By-Laws may be made at any stated or special meeting of the stockholders, provided that no amendment shall be made at a special meeting, unless the notice of the meeting shall specify the amendment as one of the purposes of the meeting.

1899. Form of Oath of Judges.

Commonwealth of Pennsylvania, }
County of } ss:

On this day of A. D. 19 , personally appeared before me, a in and for the county aforesaid, , stockholders duly appointed judges, by the board of directors of the Company, to conduct an election of said company, to be held on the day of , 19 , who being duly sworn, or affirmed, do depose and say that they will well

Sworn to, or affirmed, and subscribed }
before me, the day and year aforesaid. }
..... }
..... }
..... }

Judges.

(Seal)

KNOW ALL MEN BY THESE PRESENTS, That I, _____ of _____ do hereby appoint _____, of _____, or in his absence _____, of _____, to be my substitute and Proxy, for me and in my name and in my behalf to vote at the election of officers of _____ or on any other business relating to the said Company, at the next annual meeting, or at any adjourned or other meeting of the Stockholders of said Company as fully as I might or could were I present, and I hereby revoke any other proxy heretofore given by me.

Witness present:

[L. S.]

To the Secretary of the Commonwealth of Pennsylvania:

In compliance with the authority and requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act regulating the change of corporate titles," approved the twenty-second day of April, A. D. 1903, the Company hereby certifies under its corporate seal:

1st. That it is a corporation created and existing under the act of the General Assembly of the Commonwealth of Pennsylvania entitled _____, approved the _____ day of _____, A. D. _____, and the supplements thereto and amendments thereof, as shown by its charter and letters patent, dated the _____ day of _____, A. D. _____.

2nd. That at a meeting of the Board of Directors of said corporation, held pursuant to due and legal notice, at the office of the company on the _____ day of _____, A. D. 19____, the following resolution was adopted by a two-thirds vote thereof:

"Resolved, That the name, style and title of this corporation be changed from Company to Company."

3rd. That the above resolution was adopted by a two-thirds vote of the stockholders of said corporation at a meeting held pursuant to due and legal notice, at the general office of the company on the day of A. D. 19 .

4th. The name under which the said corporation was originally incorporated is _____ and the subsequent changes therein are as follows:

5th. That the name which the corporation desires to adopt is _____.

In testimony whereof the said _____ Company, by order of its Board of Directors, has hereunto affixed its corporate seal duly attested by its President and Secretary this _____ day of _____, A. D. 19 _____.

Company

By

(Corporate Seal)

President.

Attest:

Secretary.

Commonwealth of Pennsylvania, } ss:
County of _____

Be it remembered, that on the _____ day of _____, A. D. 19 _____, before me _____ personally appeared _____ President of the above-named corporation, _____ Company, who being duly sworn, deposes and says that he was personally present at the execution of the above written certificate and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said company, and that the above written instrument or certificate was duly signed, sealed and delivered by, and as and for the act and deed of the said company for the uses and purposes therein mentioned by authority and direction of the persons and bodies corporate holding at least a two-thirds majority in interest of the capital stock of the said company, and that the name of this deponent, subscribed to the said certificate as the President of the said corporation, in attestation of the due execution and delivery of the said certificate, is of this deponent's own proper handwriting.

Sworn to and subscribed before me the day and year above written.
Witness my hand and seal of office.

.

1902. Registry of Domestic Corporation in Auditor General's Department.

Office of the _____, 19 _____.

To the Auditor General of the Commonwealth of Pennsylvania:

SIR:

In compliance with the requirements of the nineteenth section of an Act of the General Assembly of Pennsylvania, approved June 1, 1889, entitled "A further supplement to an act entitled 'An act to provide revenue by taxation,' approved June 7, 1879," and the several supplements thereto, I hereby certify for registration in your office the following information concerning the company hereinafter named:

Name of Company _____ . Act of Assembly or Authority under which organized or incorporated, _____ . Date of incorporation or organization, _____ . Place and Nature of business, _____ . Amount of capital author-

ized, . Amount of capital paid in . Name and P. O. address
of President, . Name and P. O. address of Secretary, .
Name and P. O. address of Treasurer, .
[Seal of Co.]

.
President, Secretary or Treasurer.

NOTE.—There is a penalty prescribed by law of \$500 for each omission to report to the Auditor General's Department any change in the name or address of the officers of a corporation.

1903. Registry of Foreign Corporation in Auditor General's Department.

Office of the . Company, 19 .

To the Auditor General of Pennsylvania:

SIR:

In addition to the requirements of the Act of May 8, 1901, relating to Foreign Corporations, Limited Partnerships and Joint-Stock Associations, and in pursuance to an Act approved June 1, 1889, and the several supplements thereto, the said company Certifies for Registration in your Department, the following information, viz.:

1. That the name or title of the Company is
2. That it was incorporated or organized , 19 , under the Laws of the State of
3. That its principal office is located at
4. That its office in Pennsylvania is located at and the duly authorized agent to transact business at said office is
5. That the object and business of the Company is
6. That its authorized Capital Stock is \$. Paid in Capital \$.
7. That the names and addresses of its officers are as follows:

President (or Chairman.)	Secretary.	Treasurer or Cashier.
Address.	Address.	Address.

In witness whereof, the seal of the Company is hereto affixed, attested by the signature of its President (or chairman) and Secretary or Treasurer.

[Seal of Company.]

.
President (or Chairman.)

.
Secretary or Treasurer.

1904. Form of Capital Stock Reports of Miscellaneous Corporations.**REPORT OF CAPITAL STOCK, 190****Of Corporations**

Other Than Transportation, Telegraph, Land, Coal, Coke, Mining, Brick, Slate, Stone Quarrying and Manufacturing Companies.

Report of the Company for the year ended the First Monday of November, A. D. 190

To the Auditor General of Pennsylvania:

Agreeably to law, as President (or Treasurer) of the above-named Company, I make the following Report:

Cap. Stock.	Authorized.	Author'd Shares.	Shares Issued.	Par Value.	Amount of Capital Paid In.	
					Cash.	Property.
Common, .	\$	\$	\$	\$
Preferred,
Total ...	\$	\$	\$	\$

Dividends.	Amount.	Date of Each Dividend.	Sale of Stock.	Price.
Capital upon which dividends were declared, \$..	Highest price bet. 1-15 Nov.,.....	\$
Amount of each dividend,	Highest price sales during year,.....	\$
Rate per cent. of each "	Average price of sales during year,.....	\$
Total am't of dividends,		

Gross Earnings or receipts.	Amount.	Expenditures.	Amount.	Net Earnings or Receipts.
From—		For		\$
" Operation, \$.....	Operation, \$...
" Interest upon Investments,	Betterments or improvements,
" Rentals, \$.....	Royalties Paid,
" Other Sources,..... \$.....	Taxes,
		Interest upon Debt,
Total, .. \$	Total, .. \$	\$

Surplus and Sinking Fund.	Amt.	Debt.	Amount.	Rate of Interest.	Amt. of Int. Paid.
Profit to Surplus during year, .. \$.....	Funded, \$...	\$
Amount of Surplus from previous year,	Mortgage,
Amount profit to Sinking Fund during year,	Floating,
Amount in Sinking Fund at end of tax year,	Other Indebtedness,
		Debt paid during year

GENERAL BALANCE SHEET.

Assets.	Amount.	Liabilities.	Amount.
Value of Property	\$	Capital Stock,	\$
Bills Receivable,	Funded Debt,
Cash and Current Assets,	Bills Payable,
Stocks of other Companies,	Other Liabilities,
Bonds of other Companies,	Profit and Loss,
Profit and Loss,		
Total, .. \$	Total, .. \$

Date of Charter, ; State of

.....
President or Treasurer.

APPRAISEMENT AND VALUATION OF CAPITAL STOCK.

(Note.—Appraisement to be made between the first and fifteenth days of November of each year, as required by Act of June 8, 1891, by any two of the following-named officers, namely: President, Secretary or Treasurer.)

Appraisement and valuation of the Capital Stock of the.....Company,
for the year ended the First Monday of November, 190

.....County, ss:

On thisday ofA. D. 190 , before me, the
Subscriber, a Notary Public, in and for said county, appeared....., President,
and....., Secretary or Treasurer, of the said Company, who, being by me
severally duly sworn, (or affirmed) say that the foregoing Report of Capital Stock
is just and true, and that they will, with fidelity, and according to the best of
their knowledge and belief estimate and appraise the Capital Stock of said Com-
pany at its actual value in cash, according to law, as it existed between the first
and fifteenth days of November, A. D. 190 , not less, however, than the average
price which said stock sold for during said year, and not less than the price or
value indicated or measured by net earnings, or by the amount of profit made
and either declared in dividends or carried into surplus or Sinking Fund, and not
less than the actual value indicated or measured by the intrinsic value of its tangible
property and assets, the extent and value of its good will and franchises and
privileges, and the material results of their exercise.

Sworn or affirmed and subscribed before
me, the day and year aforesaid.

(To be signed by two officers.)

.....
Notary Public.

.....
President.
.....
Secretary or Treasurer.

My Commission expires,

CERTIFICATE OF VALUATION.

Address of Company,.....

.....Pa.,190

We, the undersigned,.....President, and.....
Secretary or Treasurer, of the said Company, do hereby certify that in pursuance
of the aforesaid oath (or affirmation) we have estimated, valued and appraised its
Capital Stock as required by law at its actual value in cash, as it existed between
the first and fifteenth days of November, 190 , not less, however, than the average
price which said stock sold for during said year, and not less than the price or
value indicated or measured by net earnings or by the amount of profit made and
either declared in dividends or carried into surplus or Sinking Fund, and not less
than the actual value indicated or measured by the intrinsic value of its tangible
property and assets, the extent and value of its good will and franchises and privi-
leges and the material results of their exercise, as follows, viz:

A—Actual value in cash of.....shares at \$......per share, \$.....

B— " " " " Entire Property, Assets and Franchises,
without deduction of Encumbrances,.... \$.....

C— " " " " Entire Property, Assets and Franchises,
deducting Encumbrances, \$.....

In witness whereof, we have hereunto set our hands the day and year aforesaid.

.....
President.

(To be signed by two officers.)

.....
Secretary or Treasurer.

REMARKS.

.....
.....

1905. Form of Report of Capital Stock of Manufacturing Companies.

Page 1 of this form is precisely like Page 1 of the form preceding. Page 2 of the form is as follows:

PETITION

For the Exemption from Taxation of Capital Invested in Property Actually and Exclusively Employed in Carrying on Manufacturing Within the State.

(Note.—The act of June 8th, 1893, exempts from taxation the value of so much of the Capital Stock of corporations, limited partnerships or joint-stock associations organized for manufacturing purposes as is invested, and actually and exclusively employed, in carrying on manufacturing within the State.)

To the Honorable Auditor General:

The petition of the said company, by its President and Secretary or Treasurer, respectfully represents: That said company claims exemption from taxation upon the value of so much of its capital stock as is invested, and actually and exclusively employed, in carrying on manufacturing within the State as heretofore set forth, agreeably to the provisions of the Act of June 8, 1893, entitled "An act being a further supplement to an act, entitled 'An act to provide revenue by taxation,' approved the seventh day of June, A. D. 1879, amending the amendment to the supplement thereto which became a law on the first day of June, A. D. 1889, which amendment herein amended was approved the eighth day of June, A. D. 1891, relating to the tax on capital stock," and supplements, and sets forth the following answers and statements of the facts in reference to the Company for the information of the Auditor General, viz:

STATEMENT OF FACTS.

(State in detail the amount and value of Capital, if any, which is invested in the following:)

- 1.—Mining Property, Mines, Ore Lands, Ore or Clay Banks:
Actual present cash value,.... (No. of acres,....) (Sq. ft.,....) \$.....
Assessed value, \$.....
- 2.—Real Estate not used for manufacturing purposes:
Actual present cash value,.... (No. of acres,....) (Sq. ft.,....) \$.....
Assessed value, \$.....
- 3.—Timber or Bark Lands or Leases:
Actual present cash value,.. (No. of acres,..) (No. of Cords,..) \$.....
Assessed value, \$.....
- 4.—Real Estate, buildings, machinery, raw material, manufactured product, etc., actually used exclusively in manufacturing, on which the company claims exemption from capital stock tax:
(Note.—The answer to this is intended to include all capital actually used exclusively in manufacturing in Pennsylvania.)
Actual cash value, \$.....
- 5.—Dwelling Houses, owned by the company whether leased or occupied by employees or others:
Actual present cash value, \$.....
Assessed value, \$.....
- 6.—Other Buildings not actually used for manufacturing purposes by the Company:
Actual present cash value, \$.....
Assessed value, \$.....
- 7.—Personal Property, such as Bonds (except U. S. Bonds), Stocks, Mortgages, and other Securities, state in detail on page 4:
Actual cash value, \$.....
- 8.—Amount invested in Goods and Wares manufactured by others and sold by the company:
Actual cash value, \$.....
- 9.—Actual Cash value of entire plant, property, real and personal, assets and good will or franchises of the company, \$.....
- 10.—For what purpose was the company organized, as set forth in its Charter or Articles of Association?.....
- 11.—In what business is the Company or Association actually engaged, and where?.....
- 12.—Does the Company enjoy and exercise the right of eminent domain?.....
- 13.—Is the Company engaged in the Brewing or Distilling of spirits or malt liquors?.....
- 14.—Date of incorporation or organization..... Laws of State of.....

Note.—Make any remarks or explanations of items desired on Page 4.

.....
President.

.....
Treasurer or Secretary.

The appraisement which follows the foregoing is precisely like that on Page 2 of the preceding form.

1906. Form of Report of Capital Stock of Transportation and Transmission Companies.

REPORT OF CAPITAL STOCK, 190

of

Railroads, Railways, and other Transportation Companies, Telegraph and Telephone Companies, and Electric Light Companies.

Report of the.....Company for the year ended the First Monday of November, A. D. 190

To the Auditor General of Pennsylvania:

Agreeably to law, as President (or Treasurer) of the above-named Company, I make the following Report:

Cap. Stock.	Authorized.	Author'd Shares.	Shares Issued.	Par Value.	Amount of Capital Paid In.	
					Cash.	Property.
Common, ..	\$			\$	\$	\$
Preferred, ..						
Total, ...	\$			\$	\$	\$

Dividends.	Amount	Date of Each Dividend.	Sales of Stock.	Price.
Capital upon which dividends were declared, \$..			Highest price bet 1-15 Nov.,	\$
Amount of each dividend, ..			Highest price sales during year.	\$
Rate per cent. of each " ..			Average price of sales during year,	\$
Total am't of dividends, ..				

Gross Earnings.	Amount.	Expenditures.	Amount.	Mile. Owned.
From—		For—		In Pa. Total.
" Operations, .. \$.....		Maint. of Way... \$....		
" Interest upon Investments,		" " Equip.		Operated.
" Rentals,		Betterments,		In Pa. Total.
" Other Sources,		Operation,		
		Taxes,		
		Exp. of Man'g'm't,		Net Earnings or Income.
		Int. upon Debt... ..		
Total, .. \$		Total... \$		\$

Surplus and Sinking Fund.	Amt.	Debt.	Amount.	Rate of Interest.	Amount of Int. Paid.
Profit to Surplus during year, .. \$...		Funded,	\$		\$
Amount of Surplus from previous year,		Mortgage,			
Amount profit to Sinking Fund during year, ..		Car Trusts, ..			
Amount in Sinking Fund at end of tax year, ...		Floating,			
		Other Indebtedness,			
		Debt paid during year, ..			

STATEMENT.

Assets.		Amount.	Liabilities.		Amount.
Cost of Road or Line, ... \$.....			Capital Stock, \$.....		
Cost of Equipment,			Funded Debt,		
Real Estate and Buildings,			Bills Payable,		
Stocks of other Companies,			Other Liabilities,		
Bonds of other Companies,			Profit and Loss,		
Cash and Current Assets,					
Profit and Loss,					
Total, .. \$			Total... \$		

Date of Charter,.....; State of.....
.....
President or Treasurer.

REMARKS.
.....
.....
.....

The remainder of this form is the same as that portion of the form given in Section 1904.

1907. Form of Report of Capital Stock of Mining and Quarrying Companies.

REPORT OF CAPITAL STOCK, 190
of
Coal, Coke, Coal and Coke, Mining and Quarrying Co's.

Report of the.....Company for the year ended the First Monday of November, A. D. 190
To the Auditor General of Pennsylvania:
Agreeably to law, as President (or Treasurer) of the above-named Company, I make the following report:

Cap. Stock.	Authorized.	Author'd Shares.	Shares Issued	Par Value.	Amount of Capital Paid In.	
					Cash.	Property.
	\$			\$	\$	\$
Common, ..						
Preferred, ..						
Total, ...	\$			\$	\$	\$

Dividends.	Amount.	Date of Each Dividend.	Sale of Stock.	Price.
Capital upon which dividends were declared, \$..			Highest price bet 1-15 Nov.,.....	\$
Amount of each dividend,.....			Highest price sales during year.....	\$
Rate per cent. of each "			Average price of sales during year,	\$
Total am't of dividends,.....				

Gross Earnings or Receipts.	Amount.	Expenditures.	Amount.	Net Earnings or Receipts.
From		For—		
Royalties on Coal or Coke,	\$.....	Operation,	\$.....	\$.....
Sales of Coal or Coke,		Betterments or Im- provements,		
Rentals,		Royalties Paid, ...		
Sales of Product,...		Taxes,		
Other Sources,.....		Interest upon Debt,		
Total, \$.....		Total, \$.....		\$.....

Surplus and Sinking Fund.	Amt.	Debt.	Amount.	Rate of Interest.	Amount of Int. Paid.
Profit to Surplus during year, .. \$...		Funded,	\$.....		\$.....
Amount of Surplus from previous year,		Mortgage,			
Amount profit to Sinking Fund during year,...		Floating,			
Amount in Sinking Fund at end of tax year,		Other indebt- edness,			
		Debt paid dur- ing year, ..			

GENERAL BALANCE SHEET.

Assets.	Amount.	Liabilities.	Amount.
Value of Property,	\$.....	Capital Stock,	\$.....
Bills Receivable,		Funded Debt,	
Cash and Current Assets, .		Bills Payable,	
Stocks of other Co's,		Other Liabilities,	
Bonds of other Co's,		Profit and Loss,	
Profit and Loss,			
Total, \$.....		Total, \$.....	

STATEMENT.

1. No. acres land owned :..leased :..	6. Rate per ton of Royalty received, \$...
2. If leased, state from whom, and name of owner,.....	7. Rate per ton of Royalty paid, ..
3. Term of lease,.....	8. Estimated duration of supply, ..
4. Location of Property,.....	9. Actual present cash value of en- tire assets and property, real or personal, without deduction of indebtedness,
5. No. of tons mined during the past year,	10. Assessed value for local taxa- tion,

Date of Charter,.....; State of.....

President or Treasurer.

REMARKS.

The remainder of this form is exactly similar to that of the same portion of the form given in Section 1904.

1908. Other Forms of Capital Stock Reports.

Other forms of reports of capital stock are furnished by the Auditor General for the use of land improvement companies and brick companies. These forms differ from the foregoing only in the insertion of a few questions calling for data peculiar to the business of such classes of corporations, respectively.

1909. Form of Report of Corporate Loans.

190

..... Company.

REPORT OF LOANS,

vis :

Scrip, Bonds, Mortgages, Car Trusts, Promissory Notes, Bills, Judgments, Certificates or other Evidences of Indebtedness, for Year
Ending December 31, 190

INSTRUCTIONS.

1. The Report of Loans is to be made annually, covering the calendar year, and must be filed on or before December 31st.
2. Reports must be filled up in all cases, whether or not the company has any loans or indebtedness; and if it has none, write the word "None" plainly.
3. Each question or interrogatory must be answered by inserting figures in their proper places, or the word "None;" otherwise Report will not be accepted nor filed.
4. If spaces in these blanks are not large enough to include all the data or figures required to be reported, attach a statement, as part of the Report.
5. Further Instructions will accompany this blank.

Post Office Address,.....

Date,.....190

To the Auditor General of Pennsylvania :

In accordance with the provisions of the fourth section of the Act of June 30th, 1885, and the first section of the Act of June 8th, 1891, and the requirements of your Department, I make, as Treasurer of the above named Corporation, the following Report of Loans of said company, for said year, and I do also hereby assess each and every of the Scrip, Bonds and other Evidences of its Indebtedness at their nominal value, and report the amount of said Loans and Indebtedness of the Corporation owned by residents and corporations of the Commonwealth, and others as nearly as the same can be ascertained, as hereinafter set forth :

Nominal (Par) value of all Funded or other Indebtedness, (Schedule A,) \$.....

Held and owned by Non-Residents of Pennsylvania, (Schedule B,)..... \$.....

" " Individual Residents and Corporations of Pennsylv-
ania, (however held,) (Schedule A and B,)... \$.....

.....
Treasurer.

SCHEDULE A.

Description of Loans and Indebtedness, with Amount of Each Class.

Description of Debt.	Total Amount.		Date of Issue.	Date of Maturity.	If No Interest Paid, So State.
Bonds,
Mortgages,
Car Trust Securities,
Judgments,
Scrp,
Notes,
Notes discounted or negotiated by Banks,...
All Other Certificates or Evidences of Indebtedness,
Total,.....	\$				
Are any of the above obligations issued free and clear of State Tax?

Amount, How and by Whom Held, Owned or Possessed.

Holders.	Character of Debt.	Amount.
By Individual Residents of Pennsylvania,		\$
" Individual Residents as Trustees, Agents, Attorneys-in-fact, or in other Fiduciary capacity,		
" Pennsylvania Corporations (name in Schedule B,) as Trustees, Agents, Attorneys-in-fact, or in any other Fiduciary capacity,		
" Foreign Corporations or Individuals as Trustees, Agents, Attorneys-in-fact, or in any other Fiduciary capacity for the use or benefit of Individual Residents of Pennsylvania. (Name in Schedule B)		
" Pennsylvania State Banks and Savings Institutions (not including National Banks,) (Name in Schedule B,)		
" Pennsylvania Corporations (name in Schedule B,) including those owned by National Banks,		
" Non-Residents of Pennsylvania, (in own right),		
" Persons whose residences have not been ascertained,		

SCHEDULE B.

Scrp. Bonds, Mortgages, Car Trusts, Judgments or Other Indebtedness of this Company, Owned, Held or Possessed by Corporations, Domestic or Foreign (However Held), Including National Banks.

Name of Corporation Holding Loan.	Location.	Description of Debt or Loan.	Amount.	Remarks.
				Here state whether held, owned or possessed in its own right, or as Trustee, Agent or Attorney-in-fact or in any other fiduciary capacity.
.....
.....
.....

County of.....ss:

On the.....day of.....A. D. 190 , personally appeared before me, a Notary Public in and for the County aforesaid,..... Treasurer of the said Company, who being duly.....according to law, did depose and say that the foregoing report of loans and the attached Schedules, with the amounts owned by Residents and Non-Residents of Pennsylvania and Corporations, respectively, are correct and true.

Sworn or (affirmed) and subscribed before me, the day and year last aforesaid.

.....
Notary Public.

.....
Treasurer.

My Commission expires.....190 .

1910. Form of Report of Gross Receipts of Transportation, Transmission and Electric Light Companies.

REPORT OF GROSS RECEIPTS.

To the Auditor General of Pennsylvania:

In accordance with the requirement of the 23d section of "A further supplement to an act entitled 'An Act to provide revenue by taxation,'" approved June 1, 1889, as Treasurer of the following named Company, I make the following report of the Gross Receipts of said Company for the six months ending.....190..

Office of the.....
..... Company,

(Please give Name and Address of Company here.)

Gross Receipts derived from all sources,	\$
Gross Receipts from Passenger or Freight Traffic or Business Done Wholly Within the State,	\$
That is to say:		
From Transportation of freight and passengers,	\$
From Telegraph business,
From Telephone business,
From Electric Light business,
From Express business,
From Rentals,
From all other sources, (Note below) :
Sale of Power,
Sale of Electric Supplies,
Sale of Lamps, etc.,
.....	
.....	
From carrying United States Mail,
Total Receipts Within the State	\$

Note.—Under the Act above referred to and recent decisions of the Supreme Court of Pennsylvania, affirmed by the Supreme Court of the United States, this Commonwealth can only tax receipts derived from traffic or business done wholly within the State. (See Section 23 upon the back of this blank.)

.....ss :

On this.....day of.....A. D. 190 , personally appeared before me, a.....in and for the County aforesaid.....Treasurer of the said Company, who being duly.....according to law did depose and say, that the foregoing report is true and correct.

Sworn (or affirmed) and subscribed }
before me, the day and year aforesaid. }

.....
Justice of the Peace or Notary Public.

.....
Treasurer.

1911. Form of Certificate of Common Stock.

Incorporated Under the Laws of the State of Pennsylvania.

No..... Capital \$..... Shares.....
..... Company

This certifies that.....entitled to.....Shares of Capital Stock of.....Company, transferable only on the Books of said Corporation in person or by duly authorized Attorney on the surrender of this Certificate properly endorsed.

In witness whereof the duly authorized officers of this Corporation have hereunto subscribed their names and caused its corporate Seal to be hereto affixed at, Pa., this day of A. D. 19....

.....
Treasurer.

.....
President.

1912. Form of Assignment on Back of Certificate.

For value received hereby sell, assign and transfer unto
 shares of the capital stock represented by the within certificate, and do
 hereby irrevocably constitute and appoint attorney to transfer
 the said stock on the books of the within named company with full power
 of substitution in the premises.

Dated , 190 .

In the presence of .

1913. Minutes of an Annual Meeting at Which Directors Are Elected.

Minutes of the annual meeting of the stockholders of the Com-
 pany, held at the general office of the company, , in the city of ,
 Pennsylvania, on the day of , 19 , at o'clock, M.
 Present: , holding shares: holding shares:
 holding shares, etc., etc., constituting a majority in interest of
 the stockholders.

(The first business to be transacted at an annual meeting is usually the
 presentation of the reports of the officers of the company and the discus-
 sion and approval thereof. This and any other business of like nature
 having been transacted it is customary to proceed to the election of di-
 rectors).

On motion of Mr. duly seconded by Mr. it was unanimously
 resolved that the corporation proceed to the election of a Board of Di-
 rectors to serve for the ensuing year.

Thereupon the president appointed , and , and , to
 act as judges of such election. (In the case of street railway companies
 the law requires that judges of election shall be appointed by the board of
 directors at a preceding meeting of such board. Where the by-laws pro-
 vide the method of appointing judges of election, that method should be
 followed. Where neither the act under which the corporation is formed
 nor its by-laws provide a method by which judges of election shall be ap-
 pointed, the president may either appoint or they be elected viva voce.)
 Thereupon the parties named took the oath prescribed by law* that they
 would discharge the duties of their office with fidelity and not accept any
 vote but such as they verily believe to be legal. The oath was ordered to
 be attached to and made a part of the minutes.

The judges of election were furnished with a list of stockholders en-
 titled to vote by the secretary, signed by that officer.

On motion of Mr. , duly seconded, it was unanimously agreed that
 the stockholders proceed to the nomination of directors.

Thereupon on motion of Mr. , duly seconded by Mr. , Mr.
 was placed in nomination for director, etc., etc.

*See Sec. 1899 for form of oath.

No other nominations having been made, the nominations were closed, whereupon the polls were opened and after all shares represented in person or by proxy had been voted the polls were closed. The judges of election then reported that the number of shares outstanding and entitled to vote was shares, and that the following named persons had received votes represented by the number of shares set opposite their names, respectively, as follows:

.	shares.
.	shares.
.	shares.
.	shares.
.	shares.

Whereupon it appearing that each of the persons named had received a majority of the number of shares of stock outstanding and entitled to vote, they were declared elected directors of the company for the ensuing year.

On motion of Mr. , duly seconded by Mr. , the report of the judges of election was ordered to be spread upon the minutes. (Here insert any other business which may be transacted at the meeting.)

On motion of Mr. , duly seconded by Mr. , the meeting adjourned.

.
Secretary.

1914. Judges' Return.

We, the undersigned judges, appointed by the (Directors, President or stockholders, as the case may be) of the Company to conduct an election of the stockholders thereof of a board of directors to serve for the year ending , 19 , do hereby certify, that after being duly sworn, or affirmed, we held the said election on the day of , 19 , at the office of the said Company, the time and place fixed for holding the same, and in due form and manner received the votes of the stockholders of the said company for members of the said board; and at the said election the following named persons received the votes indicated by the number of shares set against their names, respectively:

.	shares.
.	shares.
.	shares.
.	shares.

Whereby it appeared that such persons, having received the votes of a majority in interest of the stockholders of the company, were duly elected as directors of the company to serve for the said year.

.
.
.
Judges.

PRIVATE CORPORATIONS IN PENNSYLVANIA.

1915. Forms of Minutes Where Property is to be Purchased by the Company in Consideration of Stock.

STOCKHOLDERS' MEETING.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preamble and resolutions were adopted:

Whereas ha offered to sell to this Company property as follows:

in consideration of the issue of stock of this Company to the amount of dollars (\$) par value, and

Whereas, It appears to the stockholders that such property is necessary for the business of this Company, and that the same is of the value of (\$) dollars.

Resolved, That the Board of Directors of this Company be and they are hereby authorized and directed to purchase the said property above mentioned for the said price and to issue said stock in payment thereof: *Provided*, that, in the judgment of the Board of Directors, the said property is of the value above stated.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preamble and resolution were adopted:

Whereas, It has been agreed between each of the incorporators and that the stock to be issued in payment of the property authorized to be purchased by the resolution set forth above, shall include the stock subscribed by the incorporators, as evidenced by the Certificate of Incorporation.

Resolved, That the Board of Directors be and they hereby are authorized and directed to accept said property as full payment of the subscription for stock of the incorporators, and to issue full-paid stock to the Incorporators, or their assigns, to the amount of their respective subscriptions.

Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

Resolved, That the Board of Directors be and they hereby are authorized to issue capital stock of this Company to the aggregate amount of dollars, in such amounts and proportions as from time to time shall be determined by the Board and as may be permitted by law, and to accept in full or part payment of such stock such property as the Board may determine shall be necessary for the business of the Company.

MINUTES OF DIRECTORS' MEETING.

Upon motion, duly made and seconded, it was

Resolved, That this Company accept the offer of to sell to this Company the property described in the resolution of the stockholders passed authorizing the purchase, and the Board of Directors do hereby adjudge and declare that said property is of the fair value of dollars and that the same is necessary for the business of the Company.

Further resolved, That the proposed agreement for the sale of the said property presented at this meeting be and the same hereby approved as to form, and the and of the Company are hereby authorized and directed to execute said agreement in the name and on the behalf of this Company and to affix the corporate seal thereto.

Further resolved, That the President and the Treasurer be and they hereby are authorized and directed to issue to the order of said the full paid capital stock of this Company to the aggregate amount of dollars, as provided in said agreement.

Further resolved, That in compliance with the resolution of the incorporators' meeting the company accept in payment of subscriptions, as set forth in the certificate of incorporation, the property agreed to be sold to the company as mentioned in the preceding resolutions.

1916. Agreement for the Purchase of Property.

An agreement, made this day of , 19 , by and between (hereinafter called the "vendor,") of the first part, and a corporation organized under the laws of the State of Pennsylvania (hereinafter called the "company") of the second part.

Whereas, the vendor; the owner of the property and rights hereinafter described; and

Whereas, the company has been duly organized with an authorized capital stock of \$, divided into shares of the par value of \$ each; and

Whereas, the board of directors of the company have ascertained, adjudged and declared that the said property and rights are of the fair value of dollars (\$) and that the acquisition thereof is necessary for the business of the company and to carry out its contemplated objects:

Now therefore this agreement witnesseth:

I. That the vendor ha sold, assigned, transferred and set over, and do hereby sell, assign, transfer and set over unto the company, its successors and assigns, all right, title and interest in and to the following described property, to wit:

II. The company hereby agrees, in consideration of said sale and upon the delivery of said property to it, to issue to the vendor and nominees as hereinafter provided, and to such other nominees as the vendor shall in writing hereafter direct, at such times and in such amounts as they shall respectively direct, certificates of stock of the company to the aggregate amount of shares and said shares shall be deemed to be and are hereby declared to be full-paid shares and not liable to any further call, and the holders of such stock shall not be liable to any payment thereon.

III. Said stock shall be issued as follows:

To the vendor shares,

IV. The delivery of the certificates of said shares to the above-named parties and their respective receipts for the same shall be a full discharge of each of the parties hereto to the extent thereof.

In presence of:

(Corporate Seal)

Bv

Attest :

This Mortgage or Deed of Trust, Dated the _____ day of _____, in the year of our Lord One Thousand Nine Hundred and _____, and executed by and between the _____, a corporation under the laws of Pennsylvania, having its principal office in the _____, Pennsylvania, (hereinafter called "The _____ Company,") party of the first part, and the _____ Trust Company, also a corporation under the laws of Pennsylvania, having its principal office in the _____, Pennsylvania, as Trustee (hereinafter called "Trustee.") party of the second part,

Whereas, the Company is a corporation duly organized and existing under and by virtue of the Act of Assembly of the Commonwealth of Pennsylvania, entitled " ", and the supplements thereto, with an authorized capital stock of Dollars, consisting of shares of the par value of Dollars each;

And Whereas, under the laws of Pennsylvania, the Company is authorized and empowered to increase its indebtedness to such amount as it shall deem necessary to accomplish, carry on and enlarge its business and purposes, and to secure the payment of the principal and interest thereon by a Mortgage, or Deed of Trust, or other pledge of all or any part, or parts, of its real and personal property, rights, privileges and franchises, in such manner and upon such terms as its Board of Directors may determine, provided that a majority of the stockholders shall consent to such increase at a meeting duly convened to take action in relation thereto :

And Whereas, the Board of Directors of the _____ Company, at a meeting duly convened and held on the _____ day of _____, 19____, by a resolution duly adopted by the affirmative votes of all the members of said Board, resolved that the _____ Company deemed it necessary, in order to accomplish and carry on and enlarge its business and purposes, that its indebtedness should be increased in the aggregate to the amount of _____

Dollars, and declared its purpose to authorize such increase, and directed that the question of such proposed increase of indebtedness should be submitted to the stockholders for their approval:

And Whereas, at a meeting of the stockholders of the Company,

duly convened and held on the day of , 19 , at the chief office of the Company, sixty days prior notice of the holding of which meeting having been waived by all the stockholders of the Company, and all of the stockholders of the Company being present in person or by proxy, the said stockholders, in the manner required by law, did consent to the increase of the indebtedness of the Company from to , as will more fully appear by reference to the election return filed in the Office of the Secretary of the Commonwealth, at Harrisburg, Pennsylvania;

And Whereas, the Board of Directors of the Company, at a meeting duly convened and held on the day of , 19 , unanimously resolved to make an issue of bonds of the denomination of

Dollars each, payable years after date, in Gold Coin of the United States, of the present standard of weight and fineness, with interest thereon, payable semi-annually, in like Gold Coin, at the rate of per cent. (%) per annum, and that the said bonds should be free from tax, and should be executed under the corporate seal of this company, and signed by the President, and attested by its Secretary, and that interest coupons authenticated by a lithographed fac-simile of the signature of the Treasurer of this company, should be attached to said bonds, covering the semi-annual installments of interest thereon and evidencing the obligation to pay the same, and that the said bonds, interest coupons, and Trustee's Certificate upon said bonds should be of substantially the following form:

(FORM OF BOND.)

United States of America.

State of Pennsylvania.

		Company.
First Mortgage and Collateral Trust	Per Cent.	Year Gold
Bond,		
No.		\$.

The Company, a corporation under the laws of Pennsylvania, for value received, promises to pay to the bearer, or, if registered, to the registered holder hereof, at the office of the Trust Company, in the City of , Pennsylvania, (\$) Dollars, in gold coin of the United States of America, of, or equivalent to, the present standard of weight and fineness, on the day of , A. D. , and to pay interest thereon semi-annually, at the rate of per cent. (%) per annum, payable in like gold coin, at the same place, on the first days of and of each year, on the presentation and surrender of the interest coupons hereto annexed, as they severally mature; and the maker hereof further agrees that this bond, and the principal and interest thereof, shall be free from tax, and that every installment of the interest and the principal thereof shall be paid in full, without any deduction for any taxes, or charges in the nature thereof, that shall be payable on this bond, or

the principal or interest thereof, or that shall be required to be retained therefrom.

This Bond is one of an authorized issue of bonds, all of like date, tenor and amount, and numbered consecutively from one (1) to (), inclusive of both numbers, and the payment of all of said bonds, and the interest thereon, is equally and ratably secured, without any preference, priority or discrimination, and without regard to the actual time of issue thereof, by a First Mortgage, or Deed of Trust, duly executed and delivered by the maker hereof to the Trust Company, of , Trustee, upon the property, real and personal, and franchises, now or hereafter belonging to the maker hereof, and by a collateral trust pledge, under said Mortgage, or Deed of Trust, of ; and all of said bonds are made and issued subject to the provisions of said Mortgage, or Deed of Trust, and reference is made thereto with like effect as if the same were herein fully set forth.

This Bond shall pass by delivery, unless registered in the owner's name, and such registry noted on the bond by the Company's Registrar, after which no transfer shall be valid unless made on the Company's books by the registered owner and similarly noted on the bond; and it may be discharged from registration by being registered to bearer, after which it shall be transferable by delivery, but it may again be registered as before. The registry of this Bond shall not restrain the negotiability of the interest coupons by delivery merely, and if default be made in the payment of any interest coupon hereto belonging, for a period of thirty days after the same shall have become due and have been presented for payment, the principal hereof may be made due and payable in the manner provided in the mortgage, or Deed of Trust, hereinbefore mentioned.

This bond is issued and accepted upon condition that none of the officers or stockholders of the Company shall be held personally liable for the payment of any part of the principal or interest hereof, and that all rights of action to enforce any such liability are waived and forever released.

Unless authenticated by the certificate endorsed hereon, duly signed by the said Trustee, this bond shall not be valid.

In Witness Whereof, the Company, in pursuance of lawful corporate action authorizing the same, has caused its corporate seal to be hereto affixed, and this bond to be signed by its President, and attested by its Secretary, this day of , A. D. 19 .

Company.

By

Attest:

President.

Secretary.

(Seal)

(FORM OF INTEREST COUPON.)

\$

The Company promises to pay to the bearer (\$) Dollars, free from tax, at the office of the Company, in the City of

, Pa., on the day of , 19 , being six months' interest
on its Per cent. First Mortgage, Gold Bond.
No. .

Treasurer.

(FORM OF TRUSTEE'S CERTIFICATE.)

TRUSTEE'S CERTIFICATE.

It is Hereby Certified, that this bond is one of the issue of bonds described in the Mortgage, or Deed of Trust, within mentioned.

Company, Trustee.

By

President.

And Whereas, at a meeting of the Board of Directors of the Company, duly convened and held on the day of , 19 , a form of Mortgage, or Deed of Trust, identical with this instrument, from the Company to the Company, Trustee, was submitted and read, and said Board of Directors unanimously resolved that a Mortgage, or Deed of Trust, of the form submitted and read to said meeting, should be executed under the corporate seal of the Company, signed by the President and attested by the Secretary, and acknowledged and delivered to the Company, as Trustee;

And Whereas, at a meeting of the stockholders of the Company, duly convened and held on the day of , 19 , this present form of indenture was submitted and read, together with the resolutions adopted by the Board of Directors, authorizing and directing the execution and delivery thereof and authorizing and directing the making and issuing of the bonds intended to be secured thereby, and by resolutions unanimously adopted by the stockholders at said meeting, all action taken by the Board of Directors, in relation to the making and issue of said bonds and the execution and delivery of the said Mortgage, was ratified, approved and confirmed;

And Whereas, all things necessary to make said bonds, when certified by the Trustee, the valid and binding obligations of the Company, and to make this indenture a valid and binding Mortgage and lien on the property hereinafter described, have been done and performed, and the making and issuing of the said bonds, and the execution of this indenture have been in all respects duly authorized;

And Whereas, the Trust Company, of , Pa., is a corporation organized and existing under the laws of the State of Pennsylvania, with power to receive and execute the trust of this indenture and it has agreed to accept the same;

Now, Therefore, the said Company, the party of the first part hereto, in consideration of the premises and the sum of One Dollar to it in hand paid by the said Trustee, party of the second part hereto, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, set over and

confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, assign, transfer, set over and confirm unto the said Trustee, and to its successor or successors, in the trust hereby created, and to its, his or their successors, heirs and assigns, forever,

All the real and personal property, rights, privileges and franchises, which the Company, party of the first part, now owns, or hereafter acquires, and including, among other things, the following, to wit:

Together with all and singular the improvements, ways, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the income, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Company, party of the first part, in law, and equity, or otherwise, howsoever, of, in, and to the same, and every part thereof.

To HAVE AND TO HOLD all and singular the property hereinbefore mentioned and described, or intended so to be, and also all the property that shall hereafter become subject to the provisions of this Indenture, with all the rights and appurtenances, privileges and franchises, pertaining thereto, and the income and profits thereof, unto the Trustee, its successors and assigns.

BUT IN TRUST, NEVERTHELESS, under and subject to the provisions and conditions hereinafter set forth, and for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued, or to be issued, under and secured by this Indenture, and for the enforcement of the payment of such bonds and interest obligations, when payable, in accordance with the provisions thereof, and the covenants and provisions in this Indenture contained, without preference, priority or distinction as to lien, or otherwise, of any of the bonds intended to be secured hereby, over any other of said bonds, by reason of priority in time of the issue or the negotiation thereof, or otherwise.

AND IT IS HEREBY COVENANTED AND DECLARED that all the bonds, with the interest coupons thereto belonging, and intended to be secured hereby, shall be issued, certified and delivered, and that all the property and shares of stock pledged and made subject to the lien of this Indenture, shall be held by the Trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted and declared between the parties hereto, as follows, viz.:

ARTICLE I.

Section 1. No bond nor any coupon thereto attached, shall be valid, or entitled to the benefit and security hereof, unless the same shall be authenticated by a certificate endorsed on said bond, signed by the Trustee, that it is one of the issue of bonds described in this Mortgage or Deed of Trust, and such certificate so authenticated shall be conclusive and the only evidence that the bond upon which it is endorsed is duly issued hereunder and entitled to the benefit and security of this Indenture. All bonds at any time issued hereunder shall be executed under the corporate seal of the Company and be signed by its present or any future President

and attested by its present or any future Secretary, and the coupon attached to the bonds shall bear the engraved or lithographed fac-simile of the signature of the present Treasurer of the Company, which shall evidence its obligation to pay the same.

The amount of bonds hereby secured and which may be executed by the Company and certified by the Trustee, is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding Dollars.

Section 2. Upon the execution of this Indenture, and the recording thereof, the Trustee shall forthwith certify and deliver to the Company, upon the written order of the President thereof, Dollars, face value, of the bonds to be issued hereunder.

Section 3. Bonds to the amount of Dollars of the issue secured hereby, shall be executed, certified by the Trustee, and be issued and set apart, for the purpose of refunding the like amount of the Bonds of the Company, and bonds to the amount of Dollars, of the issue secured hereby, shall be executed, certified by the Trustee, and be issued and set apart for the purpose of refunding the like amount of bonds of the Company, and bonds to the amount of Dollars of the issue secured hereby, shall remain unissued, and shall not be certified at the time of the execution hereof, and shall be held by the Trustee to be hereafter certified and issued, if required by the Company, for the purpose of improving, renewing and making betterments and extensions to its , and all the bonds so to be certified, issued and set apart, for the purpose of refunding other bonds, shall be deposited with and held by and in the custody of the Trustee hereunder, and shall be delivered by the Trustee, only in accordance with the following conditions and provisions:

(a) It is understood and agreed that the Company has the right, and may, at any time or times, exchange all or any part of the bonds of this issue which shall be certified, issued and set apart in the hands of the Trustee for the purpose of refunding a like amount of other bonds as aforesaid, for an equal amount, par value, of any of the bonds so to be refunded; and the Company has the right, and may, at any time or times, for the purpose of refunding a like amount of other bonds as aforesaid, use, sell, pledge or otherwise dispose of, as it shall deem proper, any of the bonds which shall be certified, issued and set apart in the hands of the Trustee as aforesaid, provided, that in no event shall the Trustee, except as hereinafter provided, allow or permit any of the bonds set apart and deposited with it, as aforesaid, to pass from its custody, unless at the same time there shall be cancelled and delivered to the Trustee a like amount, par value, of the bonds to be refunded as aforesaid, together with all unpaid coupons, if any, thereto belonging; and provided further, that the Trustee shall not be required to deliver any of the bonds set apart in its hands for the purpose of refunding other bonds, as aforesaid, except upon the written order of the Company, signed by its President, or Treasurer.

It is further understood and agreed that, for the purpose of aiding in said refunding and enabling the Company to acquire the bonds or

any of them so to be refunded from the present or any future holder or holders thereof, the Company has and shall have the right to enter into any agreement with the holder, or holders, for the purchase or payment of the bonds so to be refunded and to pledge the bonds so set apart and deposited, as security, for the faithful carrying out of any agreement so made, and said Trustee, on request of the Company, shall certify and deliver the bonds so pledged to any pledgee, or pledgees thereof, or deposit the same with any incorporated Trust Company that may be agreed upon, to hold the same subject to any such pledge, or if so required, the Trustee may hold said bonds, so to be set apart and deposited, subject to any such pledge, for the use and benefit of the persons entitled thereto.

(b) The Company shall not require to be certified or issued any of the Dollars of bonds of the issue secured hereby, and to be held for the purpose of improving, renewing, and making betterments or extensions to its , unless before the making of any such improvements, renewals, betterments, or extensions, the Company shall submit to the Trustee a written statement, showing the nature and character of the proposed improvements, renewals, betterments and extensions, and the estimated cost thereof, as nearly as may be, together with such further information in relation to the desirability and importance thereof as the Trustee shall reasonably require; nor unless the Trustee shall deem the proposed improvements, renewals, betterments or extensions, as the case may be, advisable and to the best interest of the Company and the holders of the bonds of the issue secured hereby and then outstanding, and approve thereof; and after having procured the approval as aforesaid, and after having made any improvement, renewal, betterment or extension to its , approved as aforesaid, the Company may require so many of the said Dollars of bonds to be certified and issued, as may be necessary for such purpose, and it shall be the duty of the Trustee to certify and deliver to the Company the amount of bonds so required, provided that the Company shall file with the Trustee a written statement, verified by the oath of the President, and Treasurer, or , of the Company, showing in detail the actual cost and expenditure incurred in making such improvement, renewal, betterment, or extension, as the case may be, and that additional property, equal in value to the amount named in such statement, has been brought within the lien of this Mortgage; and provided further, that such sworn statement shall be accompanied by a resolution of the Board of Directors of the Company requiring bonds to be certified and issued for the purpose of making such improvement, renewal, betterment or extension, and not exceeding in amount the sum named in such sworn statement; and provided further, that in no case shall any of such bonds be certified and issued for the purpose of making any renewal to any part or portion of the unless such renewal shall consist in introducing something new and different in kind, or design, from the old, in place of which the new shall be substituted, the intention being to enable the Company, subject to the approval of the Trustee, if occasion arises, to resort to and use said bonds, if deemed expedient, for the purpose of installing new and superior, or more economical devices and appliances, in place of others, but in no

event shall any of said bonds be used for making any such renewals as are usually made in the course of maintenance and repairs.

Section 4. The Company will cause to be kept, at the office of the Trustee, in the City of , Pennsylvania, a register, or registers, for the registration and transfer of bonds issued hereunder, and from time to time appoint a Registrar, whose duty it shall be to keep such register, or registers, and, upon presentation, to register any such bonds therein, subject to such reasonable regulation as the Trustee may prescribe, and such register, or registers, shall, at all reasonable times, be open to the inspection of the Trustee.

Whenever, after any of such bonds shall have been registered, if the same be presented to the Registrar at his office, accompanied by the delivery of a written instrument of transfer in a form to be approved by the Company and executed by the registered holder, such bond may be transferred upon the register by the registered holder in person, or by attorney, and such transfer shall be noted by such Registrar on the bond.

The registered holder of any such registered bond shall also have the right to have the same registered to bearer, in which case the transferability of such bond by delivery shall be restored, and thereafter the principal of such bond when due, shall be payable to the bearer thereof; and any such bond registered to bearer may be registered again in the name of the holder with the same effect as if a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired, and each registration of any bond shall be noted on the bond by the Registrar appointed as aforesaid.

Registration of any bond, however, shall not effect the transferability of any coupon thereto belonging by delivery merely, and payment to the bearer of any such coupon shall discharge the Company in respect of the interest therein mentioned, regardless of whether or not the bond shall have been registered.

Section 5. In case any bond issued hereunder, or the coupons thereto appertaining, shall become mutilated or lost, or be destroyed, the Company may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date, and bearing the same serial number, and with coupons, in lieu of and in substitution for the bond and its coupons so lost or destroyed, upon receipt by the Trustee of satisfactory evidence of the loss or destruction of such bond and coupons, and upon receipt also of satisfactory indemnity.

Section 6. Until the permanent bonds to be issued under and secured by this Indenture shall have been prepared, the Company may execute, and upon its request the Trustee shall certify and deliver, in lieu of such permanent bonds, one or more temporary bonds of the denomination of Dollars each, or of any multiple or multiples thereof, and of the form and tenor of the bonds to be issued hereunder, and not exceeding in the aggregate Dollars in amount. Upon surrender of any of such temporary bonds for exchange, the Company shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in exchange therefor, lithographed or engraved coupon bonds of the denomination and tenor hereinbefore provided, and equal in amount with

the temporary bonds surrendered; and until so exchanged, each of such temporary bonds shall be entitled to the same security as a lithographed or engraved bond issued hereunder.

ARTICLE II.

The Company covenants and agrees, as follows:

Section 1. The Company will punctually pay the principal and interest of every bond issued and secured hereunder, at the times and the place and in the manner mentioned in such bonds, and the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest of or for any tax or taxes lawfully imposed thereon, or which the Company may be required to pay, deduct or retain therefrom, under or by reason of any present or future law. The interest on the bonds shall be payable only upon presentation and surrender of the several coupons for such interest, as they respectively mature, and when paid such coupons shall forthwith be cancelled.

Section 2. The Company will, from time to time, pay and discharge all taxes, licenses, governmental dues, or charges in the nature of any thereof, lawfully imposed upon, or payable by it, upon any of the property, income, indebtedness or business to it belonging, and upon every part thereof, and so that the lien of this indenture and the priority thereof shall be in all respects fully preserved; and the Company will, from time to time, pay and discharge, or cause to be paid and discharged, all taxes, licenses, assessments, and governmental dues, or charges in the nature of any thereof, lawfully imposed upon or payable by the or any thereof, or on the property income, indebtedness or business of said companies, or any thereof, and so that the title of each and every one of said companies, to their respective properties, shall be at all times kept and preserved, free from tax liens; provided, however, that the payment shall not be required hereunder, of any tax, license, assessment, governmental due, or charges in the nature of any thereof, if and so long as the validity thereof shall be in good faith contested, and the enforcement thereof delayed.

Section 3. The Company covenants and agrees that this Mortgage is, and until the bonds and coupons hereby secured shall have been fully paid, will be kept a first lien on all the property, franchises and premises described in the granting clauses hereof, and now owned by the Company, or hereafter acquired by it, and on all renewals and replacements of such property and all additions, betterments and improvements thereto; and that it will not create nor suffer to be created or permit to exist any debt, lien or charge which might or could be prior to the lien of these presents on the mortgaged property, or any part thereof, or upon the income thereof; provided, however, that nothing in this indenture shall prevent the Company from acquiring any or other property subject to an existing mortgage or other incumbrance and holding the same subject to such mortgage or other incumbrance.

The Company shall and will at all times so long as any of the bonds hereby secured or intended so to be are outstanding and unpaid, keep its buildings, machinery, fixtures and appurtenances, and all perishable

personal property usually insured by such companies, insured for a reasonable amount in and by responsible insurance companies, against loss or damage by fire, and pay all premiums upon the insurance policies. All such policies of insurance shall be taken in the name of the Company, and shall have endorsed thereon that all loss thereunder shall be payable to the Trustee hereunder, for the benefit of the several holders of the bonds hereby secured.

The proceeds of any such policy may, at the option of the Company, be used in repairing or replacing at the same place or some other place, the property so damaged or destroyed, or in the purchase or redemption of bonds issued hereunder, which bonds, when redeemed, shall be cancelled by the Trustees, and shall not again be used or issued. Before any such funds are paid out for repairing or replacing damaged or destroyed property, the Company shall furnish to the Trustee a verified detailed statement showing the repairs or replacements so made, and the amounts expended therefor, and the value of such repairs or replacements as a part of the mortgaged premises. The value of the repairs or replacements shall also, if required by the Trustee, be appraised by an appraiser or appraisers selected by the Trustee. The amount of such moneys used for such purpose shall never exceed the amount actually expended therefor, and shall in no event exceed the value fixed by said appraiser in case an appraisement be made.

The Trustee may, however, pay out such moneys from time to time during the progress of such repairs or replacements to the extent that the work done and materials furnished in making such repairs or replacements in the judgment of the Trustee justify the making of such payments.

Section 6. The Company, its successors and assigns, shall and will, on written demand of the Trustee, or its successor or successors in the trust, at any time, and from time to time, make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law as may be reasonably required for effectuating the intention of these presents, and for the better assuring or confirming unto the Trustee, and its successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular, the property, real, personal and mixed, incomes, franchises, rights and privileges hereby granted, bargained, conveyed, assigned, transferred and set over, or intended so to be, either now owned or possessed, or hereafter owned, possessed or acquired by the Company, its successors or assigns.

Section 7. The Company covenants that it will do and perform all such acts and things as may be necessary to preserve its corporate franchises and to enable it to own, maintain and operate the mortgaged property and premises.

ARTICLE III.

The Company covenants that it will from time to time, assign, transfer and deliver unto the Trustee, as additional security for the bonds issued or to be issued hereunder, all shares of stock of other corporations which it may, at any time, hereafter acquire; and all such shares of stock so assigned, transferred and delivered to the Trustee shall be held by the

Trustee for the benefit and security of the several holders of the bonds issued hereunder and shall be subject to the trusts of this indenture, as fully and completely as though specifically assigned, transferred and delivered to the Trustee at the execution hereof. And as to all shares of stock assigned, transferred and delivered to the Trustee, either at the time of the execution hereof, or any subsequent time, or times, the following additional covenants and provisions are hereby made, viz.:

(1) It shall be the duty of the Trustee to see that the shares of stock of every corporation transferred to it for the purpose of this trust, are duly and properly assigned to it for the said Trustee, or its nominee, upon the books of such corporation, and that proper certificates therefor are issued by the corporation, and the transfers on the books shall be to the Company, or its nominee, as "Trustee and Pledgee, under an Indenture made by Company, dated ." The same shall also appear at length on the certificates of stock.

(2) The Trustee shall file with the several corporations, whose shares of stock are so transferred, standing orders to pay over to the Company, from time to time, all dividends which shall be payable on the said shares of stock, and the Company shall collect and receipt for said dividends. If default be declared against the Company, as herein provided, the Trustee may, in addition to the other remedies in such case provided, revoke such orders and collect and receive all such dividends thereafter payable on such shares of stock. All sums so collected or received by the Trustee, after deducting all expenses incurred by the Trustee in the premises, shall be applied by the Trustee as follows: In case the principal of the bonds hereby secured shall not have become due (1) to the payment of any interest in default upon the bonds hereby secured in the order of the maturity of the installments of such interest, with interest on the overdue installments thereof at the rate of () per annum, and (2) to the payment of any other sums that then shall be due and payable from the Company under the provisions of this indenture; but in case the principal of the bonds hereby secured shall have become due by declaration or otherwise, then such moneys shall be applied, first, to the payment of the accrued interest, in the order of the maturity of such interest installments, and next to the payment of the principal of all bonds hereby secured, without discrimination or preference. After any such default shall have been made good or shall have been waived, the right of the Company to receive and collect such dividends on such stocks and the duty of the Trustee to execute such assignments and orders shall revive, and shall continue as though such default had not taken place.

(3). Unless there shall be some continuing default that shall have been declared against the Company, as provided in this Indenture, the Company shall have the right, except as hereinafter limited, to vote upon all shares of stock which shall have become subject to this Indenture for all purposes not inconsistent with the provisions and purposes of this Indenture, with the same force and effect as though such shares were not subject to this Indenture; and the Trustee, on demand of the Company, shall, from time to time, execute and deliver to the Company, or to such person or persons as may be designated by resolution

of its Board of Directors, or in the absence of such resolution, upon the written authority of the President of the Company, such proxies or powers of attorneys as will enable the Company, or the person or persons so designated, to vote upon all shares of stock of other corporations or associations that shall have been transferred to the Trustee hereunder, at all meetings, whether general or special, of the shareholders of any such corporation or association, to the same extent and with the same effect (subject to the limitations herein contained) as though such shares were absolutely owned by the Company and were not subject to this Indenture.

Nevertheless, in all cases where the shares of stock so transferred to the Trustee constitute a majority of the shares of stock of any corporation, the voting power of such shares shall not in any case or at any time be conferred or be used or exercised for the purpose of authorizing the creation of any secured indebtedness of any corporation or association, a majority of the shares of the capital stock of which shall be held by the Trustee hereunder, or the creation of any lien or charge upon the property or franchises of such corporation or association, except to secure advances or loans from the Company, to enable such corporation or association to make betterments, improvements, or extensions, or to acquire additional property, or to pay and discharge liens or charges upon the property or franchises of such company. Any such secured indebtedness, lien or charge created as security for advances or for loans from the Company, and the evidence thereof, forthwith shall be transferred by the Company to the Trustee hereunder and by it held in all respects as though the same had been transferred and delivered to the Trustee under the granting clauses hereof, at the time of the execution of this Indenture.

Until a default shall have been declared against the Company, as provided herein, all sums which shall be paid in satisfaction or discharge of any such secured indebtedness, lien, charge or obligation, shall belong to and be received by the Company, and shall not be held by the Trustee. A certificate duly verified by the President or Vice President, and the Treasurer of the Company, stating that such lien, charge, indebtedness or obligation has been paid in whole or in part, shall be sufficient proof to the Trustee of the facts therein stated, and upon receipt of such proof that such lien, charge, indebtedness or obligation has been fully paid, the Trustee shall cancel and surrender to the Company the evidence of such lien, charge, indebtedness or obligation, and if the same be of record shall cause satisfaction thereof to be entered of record. All sums paid in satisfaction or discharge of any such indebtedness, lien, charge or obligation, and received by the Trustee after there shall have been a default declared, as provided herein, shall be kept by the Trustee in a separate fund, and shall be used and applied by the Trustee in the same manner as provided in clause two (2) of this Section with reference to dividends upon shares of stock pledged hereunder received by the Trustee after default shall have been declared.

Whenever requested by resolution adopted by the affirmative votes of at least two-thirds of the directors of the Company, the Trustee shall

vote or shall execute its proxy or power of attorney to vote upon the shares of stock of other companies held by it under this Indenture in favor of the increase or reduction from time to time of the capital stock of any such company. In case of the increase of the capital stock of any company, the greater part of whose capital stock shall be pledged hereunder, the Company forthwith shall assign, transfer and deliver to the Trustee by it to be held upon the trusts of this Indenture in the same manner as though assigned and transferred and delivered to the Trustee at the date of the execution hereof, the additional fully paid capital stock of such company, or such part thereof as shall be proportionate to the part of the entire capital stock of such company previously held by the Trustee hereunder.

In case of the reduction of the capital stock of any such corporation, the Trustee may surrender the shares necessary for the purpose of effecting such reduction, or such part thereof as shall be proportionate to the part of the entire capital stock of such company previously held by the Trustee hereunder.

The Trustee is also authorized and directed, whenever requested by a resolution adopted by the affirmative votes of at least two-thirds of the Directors of the Company, to vote, or execute its proxy, or power of attorney, to vote upon the shares of stock of any company pledged hereunder, in favor of the merger and consolidation of such company with any other company with which any merger or consolidation may be lawfully made, and generally to vote in favor of the exercise of any power, now or hereafter vested in any company whose shares of stock are pledged hereunder, provided that, in the opinion of the Trustee, such power may be exercised without detriment to the owners and holders of the bonds secured hereby, or provided that a majority of such bondholders shall assent thereto in writing.

(4) At any time in its discretion the Trustee may, and if requested in writing by the Company shall, consent to the extension or renewal of any bonds or obligations which hereafter shall be deposited by the Company with the Trustee hereunder, and to the extension or renewal of any mortgage or lien securing such bonds or obligations. The Trustee may receive the opinion of any counsel as conclusive evidence of the existence of all facts authorizing any such extension or renewal of bonds or obligations.

Section 2. The Company further covenants and agrees that if any company of whose capital stock the greater part shall be pledged hereunder, while the greater part of the capital stock is so pledged, shall fail to pay any taxes, assessments or other charges lawfully imposed upon its property, or upon the business, income, indebtedness or profits of such company, then the Company will forthwith pay and discharge the same; provided, however, that the Company shall not be required to pay any such tax, assessment or charge, so long as the validity thereof shall in good faith be contested, unless such payment shall be necessary to prevent foreclosure or loss of any property of such company.

Section 3. The Company further covenants and agrees that if any company of whose capital stock the greater part shall be pledged here-

under, while the greater part of the capital stock of such company shall be pledged hereunder, shall create or suffer to be created, or permit to exist, any lien or charge upon its property or income, or create or suffer to be created, or permit to exist any indebtedness other than (1) indebtedness existing at the date of transfer and pledge of such shares of stock hereunder, or indebtedness in substitution of any secured indebtedness existing at such date or (2) indebtedness for the current operating expenses of such company during a period not exceeding six months, then the Company forthwith will pay and discharge the same, or will acquire and transfer the same to the Trustee for the further security of the bonds hereunder in the same manner and upon like conditions as are provided in Clause 3 of Section 1 of this Article as to secured indebtedness transferred to the Trustee.

ARTICLE IV.

Section 1. Until some continuing default shall have been made in the due and punctual payment of the interest or the principal of the bonds hereby secured, or of some part of such interest or principal or in the due and punctual performance of some covenant or condition hereof, obligatory upon the Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the

Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property (except shares of stock to be delivered to and held by the Trustee) that may be conveyed and mortgaged to the Trustee, and to manage, operate and use, or cause to be managed, operated and used, the same, and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues, and profits thereof. With the right at all times to alter, change, add to, repair, dispose of and replace any and all , machinery and fixtures; provided only that the security of said bonds shall not thereby be in any way impaired or diminished.

Section 2. The Company shall maintain, preserve and keep, or cause to be maintained, preserved and kept, the mortgaged property and premises and every part thereof, in thorough repair, working order and condition, and supplied with and equipment, and will, from time to time, make or cause to be made, all needful and proper repairs, replacements, additions, betterments and improvements, so that the efficiency of the mortgaged property, and every part thereof, and the mortgage security, shall at no time be impaired or diminished, and that the business thereof shall at all times be conducted in a good and business like manner.

Section 3. If at any time any property, subject to this Indenture, including the shares of stock pledged hereunder, cannot be advantageously used in the proper and judicious operation of the business of the Company, or if the sale or disposition thereof has become necessary for any cause, the same or any interest therein may be sold, or exchanged for other property, and upon the requisition of the Company, the Trustee shall release the same from the lien and effect of this Indenture, but only upon the following provisions and conditions:

(a) The necessity and propriety of such sale, exchange or disposition shall be approved by a person or persons selected or approved by the Trustee, who shall make a report in writing to the Trustee stating the reasons for such approval.

(b) Before any property or any interest therein shall be released, the same shall be appraised by an appraiser, or by more than one appraiser, who shall be selected or approved by the Trustee.

(c) In case of such sale of any property, or of any interest therein, the price or proceeds of such sale, not less than the value of such property, or of such interest, as appraised by the appraisers, or a sum equal to such price or proceeds, shall be deposited with the Trustee hereunder to be held for the further security of the bonds hereby secured until paid over or applied as hereinafter provided.

(d) In case of an exchange, other property appraised by an appraiser or appraisers selected or approved by the Trustee, to be of value at least equal to the appraised value of the property given in exchange, shall be subject to the lien and operation of this Indenture, free and clear of all other liens or incumbrances.

The moneys received by the Trustee upon any such sale, and any moneys received by the Trustee upon any other disposition of any property subject to this Indenture shall be applied as follows:

(1) The Company, under the direction of the Trustee, may thereafter expend such money or part thereof, in the acquisition of real estate necessary for the use of the Company, or in or in the construction of plants or buildings necessary or useful in the operations of the company, which lands, extensions and additions shall forthwith be subject to the lien of this Indenture, free and clear of all other liens and incumbrances and claims for which liens might be claimed.

Before any such funds are paid out for such purpose, the Company shall furnish to the Trustee a verified statement showing the amounts actually expended by the Company and for what property, and such property shall also be valued by an appraiser or appraisers selected or approved by the Trustee. The amount of such moneys used for the payment for such property shall not exceed the amount actually expended by the

Company therefor, and shall in no event exceed the value of such property as fixed by such appraiser or appraisers.

(2) Or, if so requested by the Company, the Trustee may apply such proceeds, or any part thereof, in purchasing bonds hereby secured, which bonds when so purchased shall be cancelled by the Trustee and shall not again be used or issued.

ARTICLE V.

Section 1. No coupon belonging to any bond hereby secured, which in any way at or before maturity shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from this Indenture, except after the prior payment in full

of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Section 2. In case default shall be made (1) in the payment of any interest on any bond or bonds hereby secured and outstanding, and any such default shall have continued for a period of days, or (2) in case default shall be made in the payment of the principal of any of the bonds hereby secured and outstanding, or (3) in case default shall be made in the prompt payment of any debt or charge required by Section 4 of Article 2 hereof to be paid by the Company, or, in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Company, and any such last mentioned default shall continue for a period of days after written notice thereof to the Company from the Trustee, or from the holders of per cent. in amount of the bonds hereby secured and then outstanding, specifying wherein such default consists, then and in every case the Trustee shall declare the principal of all the bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this Indenture or in said bonds to the contrary notwithstanding.

This provision, however, is subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of per centum on all overdue installments of interest shall either be paid by the Company or be collected out of the mortgaged premises, before any sale of the mortgaged premises shall have been made, and every other default incurred by the Company, if any, shall have been made good, then and in every such case the holders of a majority in amount of the bonds hereby secured and then outstanding by written notice to the Company and to the Trustee may waive such default and its consequences, and the holders of the remainder of the bonds shall be bound by such waiver; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 3. In case default shall be declared against the Company, as provided in Section 2 of this Article, the Company, upon demand of the Trustee, shall and will forthwith surrender to the Trustee the actual possession, and the Trustee shall be entitled forthwith, with or without process of law, to enter into and upon and take possession of all and singular the property and premises hereby mortgaged, or pledged, or intended so to be, and each and every part thereof, with all records, books, papers and accounts of the Company, and to exclude the Company, and its agents and servants, wholly therefrom, and it shall have, hold and use the same, controlling, managing and operating by its superintendents, managers, receivers, servants and other agents, or attorneys, the said property, with the appurtenances, and conducting the business and operations thereof and exercising the franchises pertaining thereto, and making from time to time, at the expense of the trust estate, all repairs and replacements, and such useful additions, alterations and improvements thereon and thereto as to the said Trustee may seem proper and judicious,

and may collect and receive all income, rents, issues and profits of the same, and every part thereof, and after deducting all expenses of maintaining, managing and operating said property and conducting the business thereof, and of all repairs, replacements, additions, alterations and improvements so made, and all payments made for taxes, levies, assessments, insurance premiums and other proper charges upon said property, or any part thereof, and as well just compensation for services of the Trustee, its agents, clerks, servants, attorneys and counsel, shall apply the remainder of the money so received by it as follows:

In case the said bonds shall not have become due by maturity, and if every default, if any, declared shall have been waived, or made good, as provided in Section 2 of this Article, such moneys shall be paid over to the Company, or as it may in writing direct; and if said bonds shall have become due at maturity, or such default shall not have been so waived or made good, then such moneys shall be applied in the manner provided in Section 9 of this Article.

Section 4. The principal of the bonds secured hereby having become due at maturity, or having been made due, as in this Article provided, the Trustee, in its discretion, may, after entry or without entry and taking possession, and shall, if so requested in writing by the holders of per cent, in amount of the bonds then outstanding and unpaid, proceed to sell at public auction, either separately or as a whole, unto the highest and best bidder, all and singular the property then subject to the lien of this Indenture. Any such sale shall be made at public auction in the , or at such other place and at such time, and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or the Trustee may proceed to protect and enforce its rights and the rights of the bondholders under this Indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee being advised by counsel learned in the law shall deem effectual to protect and enforce the rights aforesaid.

The Trustee may adjourn, from time to time, any sale by it to be made under the provisions of this Indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale, and without further notice or publication it may make such sale at the time and place to which the same shall be so adjourned.

Section 5. Notice of any such sale pursuant to any provision of this Indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and whether the same is to be sold in parcels or in one lot, and shall be sufficiently given if published once in each week for successive weeks prior to such sale in daily newspapers of general circulation, published in the , Pennsylvania, and also in like manner in daily newspapers of general circulation published in , Pennsylvania.

Section 6. In case the Trustee shall have proceeded to enforce any

right under this Indenture, by foreclosure, entry or other remedy, or at law, proceedings shall have been discontinued or abandoned or of any trust waiver, or for any other reason or shall have been determined, other remedy to the Trustee, then and in every such case the Company and its assigns, unless the Trustee shall be restored to their respective former positions and rights as to the mortgaged property and all rights, remedies and powers; nor shall the Trustee shall continue as though no such proceeding had been taken hereby.

Section 7. Any such sale or sales made under or by virtue of this Indenture, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity of the Company of, in and to the property so sold, and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the Company, its successors or assigns, and the receipt of the Trustee for the consideration money paid at any such sale shall be a sufficient discharge to the purchaser, without any liability upon the part of the purchaser to see to the application of the purchase money, or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 8. In case of such sale, whether under the powers of sale hereby granted or pursuant to judicial proceedings, the principal sums of all the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this Indenture to the contrary notwithstanding.

Section 9. The purchase money, proceeds and avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee, under any of the provisions of this Indenture, as part of the trust estate or the proceeds thereof, shall be applied as follows:

(1.) To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee.

(2.) To the payment of the whole amount then owing or unpaid upon the bonds hereby secured, for principal and interest, with interest at the rate of _____ per centum per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon such bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, but ratably to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provisions of Section 1 of this Article.

(3.) To the payment of the surplus, if any, to the Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Section 10. In case of any sale hereunder, any purchaser for the purpose of making settlement for the property purchased, shall be entitled to

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Section 13. No holder of any bond or coupon hereby secured shall have

any right to institute any suit, action or proceeding in equity, or at law, for the foreclosure of this Indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, or for the collection of any of said bonds or coupons, unless such holder previously shall have given to the Trustee written notice of a default; and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee and shall have offered to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such actions, suit or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever by his or their action, to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Section 14. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall in addition to every other remedy given hereunder, or now, or hereafter existing at law or in equity or by statute; but no action at law shall be instituted against the Company by any bondholder to enforce the contractual liability of the Company by reason of its covenants and promises contained in said bonds until the property hereby mortgaged shall have been exhausted by pursuit of the remedies herein provided.

Section 15. No delay or omission of the Trustee, or of any holders of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Article to the Trustee or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient by the Trustee or by the bondholders.

ARTICLE VI.

Section 1. From time to time the holders of in amount of all the bonds hereby secured for the time being outstanding, by their votes at a meeting of the bondholders held as provided in Section 2 of this Article or by an instrument or instruments in writing, signed by such bond-

holders, at or following such meeting, shall have power (1) to assent to and authorize any modification or compromise of the rights of the bondholders and of the Trustee against the Company, or against any property covered by this Indenture, as may be recommended by the Trustee, whether such rights shall arise under these presents or otherwise; and (2) to assent to and authorize any modification of the provisions of this Indenture that shall be proposed by the Company and recommended by the Trustee.

Section 2. Meetings of the bondholders may be convened in Pennsylvania, by the Trustee, and shall be convened by the Trustee on the request in writing of the holders of in amount of the outstanding bonds, and in the event of the refusal or neglect of the Trustee for days after such request shall have been delivered to the Trustee to convene such meeting, or meetings, of the bondholders, the holders of in amount of the then outstanding bonds may convene the same, and notice of the time, place and purpose of every such meeting or meetings, shall be given by the party or parties, calling the same by advertisement a week for successive weeks in at least daily newspapers of general circulation, published in the , State of Pennsylvania, and also, in like manner, in daily newspapers of general circulation published in the , Pennsylvania, the last of which advertisements shall not be less than days before the date fixed for such meeting. A copy of such notice shall also be mailed, in a sealed envelope, duly stamped and addressed, to each registered holder of a bond, or bonds. Subsequent meetings may be called in such manner as may be fixed by regulations prescribed or established by the bondholders at such meetings; and such regulations or by-laws in respect of such meetings may, from time to time, be established, altered or repealed by in amount of the bonds represented at such meeting as to them shall deem expedient; and until the bondholders shall make such regulations and by-laws, such powers may be exercised by the Trustee. At all such meetings bondholders may be represented and vote in person, or by proxy. Any act or resolution of the bondholders affecting the duties of the Trustee shall be authenticated by the signatures of all the bondholders in person, or by proxy, assenting thereto, as well as by a minute of the proceedings of the meeting. The presence in person, or by proxy, of the holders of not less than in interest of the outstanding bonds hereby secured shall be required to constitute a quorum at any such meeting of the bondholders.

Any action herein authorized taken with the assent or authority, given as aforesaid, of the holders of in interest of the bonds hereby secured for the time being outstanding and duly evidenced as herein required, shall be binding upon the holders of all the bonds hereby secured, and upon the Trustee as fully as though such action were specifically and expressly authorized by the terms of this Indenture.

ARTICLE VII.

Section 1. Any request, direction, resolution, or other instrument required by this Indenture to be signed and executed by bondholders, may be

in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person, or by agent appointed in writing. Proof of the execution of any such request, direction, resolution or other instrument, or of the writing appointing any such agent, and of the ownership of bonds, which are not registered as hereinbefore provided, shall be sufficient for any purpose of this Indenture, and shall be conclusive with regard to any action taken by the Trustee under such request if made in the following manner:

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who, by the laws thereof, has power to take acknowledgments of deeds within said jurisdiction, that the person signing such writing, acknowledged before him the execution thereof; or, by the affidavit of a subscribing witness to such execution.

The fact of the holding of bonds issued hereunder by any bondholders, and the amount and the serial number thereof, and the date of his holding of any such bonds, may be proved by a certificate executed by any Trust Company, bank, bankers or other depositories (wherever situate) if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such Trust Company, bank, bankers or other depository, the bonds described in such certificate.

Section 2. The Company and the Trustee may deem and treat the bearer of any bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon as the case may be, for the purpose of receiving payment thereof, and for all other purposes, unless the Trustee shall have been notified in writing to the contrary.

The Company and the Trustee may deem and treat the person in whose name a bond shall be registered upon the books of the Company as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder, or to his legal representatives or assigns, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

ARTICLE VIII.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Company, or against any successor corporation, either directly or through the Company, by the enforcement of any assessment, or by any legal or equitable proceedings by virtue of any statute or otherwise, it being expressly agreed and understood that this Mortgage and the obligations

hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Company, or by any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture, or in any of the bonds or coupons hereby secured, or which may be implied therefrom; and it is agreed that this Indenture and the bonds and coupons hereby secured are executed and accepted on condition that any and all personal liability, and all rights of action, and claims of whatsoever nature, against every such incorporator, stockholder, officer or director, whether at common law or equity, or created by statute or constitution, or otherwise arising, are hereby expressly waived and forever released.

ARTICLE IX.

If when the bonds hereby secured shall have become due and payable, the Company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured and then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this Indenture; then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the Company, and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and for the discharge of record of this Indenture, and shall transfer and deliver to the Company all shares of stock, or other securities, which may then be pledged hereunder.

ARTICLE X.

Section 1. Any Trustee hereafter appointed, may be removed at any time by an instrument, or concurrent instruments, in writing signed by the holders of not less than in amount of the bonds hereby secured and then outstanding. In case at any time the Trustee, or any Trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments signed by such bondholders, or their attorneys in fact, duly authorized, but in case at any time there shall be a vacancy in the office of Trustee hereunder, the Company, by an instrument executed by order of its Board of Directors, may appoint a Trustee to fill such vacancy until a new Trustee shall be appointed by the

bondholders, as herein authorized. The Company shall publish notice of any such appointment by it made once in each week for successive weeks in a daily newspaper of general circulation published in the , Pennsylvania, and in like manner, in daily newspaper of general circulation, published in the , Pennsylvania.

At any time within months from the date of the last publication of such notice, the holder or holders of a majority in amount of the bonds then outstanding, if for any reason dissatisfied with the Trustee so appointed by the Company, may, in the manner hereinbefore provided, appoint a new Trustee. A copy of the instrument, or instruments, constituting such appointment shall be deposited with the Company, and the original thereof delivered to the new Trustee; whereupon such new Trustee shall deliver a certified copy of such appointment so made by the bondholders to the Trustee appointed by the Company, and thereupon the Trustee named by the bondholders shall be vested with all the powers, authority and estates granted and conveyed to the Trustee herein named without any other or further assurance or conveyance. Until the appointment of a successor in the manner herein provided, the Trustee appointed by the Company shall be vested with all the powers herein conferred upon the Trustee. Every Trustee appointed by the bondholders, or by the Company, shall be an incorporated trust company in good standing, having its principal office in the , Pennsylvania.

Section 2. Any new Trustee appointed hereunder shall execute, acknowledge and deliver to the Trustee last in office, and also to the Company, an instrument accepting such appointment hereunder, and thereupon such new Trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as Trustee herein; and the Trustee ceasing to act, shall, nevertheless, on the written request of the Company, or of the new Trustee, execute, acknowledge and deliver to such new Trustee such instruments as may be reasonably required to convey upon the trusts herein expressed, all the estates, properties, rights and powers of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and moneys held by such Trustee to the new Trustee. Should any deed, conveyance or instrument in writing from the Company be required by any new Trustee for more fully and certainly vesting in and confirming to such new Trustee such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by it.

ARTICLE XI.

The Trustee for itself and its successors, hereby accepts the trusts and assumes the duties herein created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine, and to have been signed by the proper party.

(b) The Trustee shall not be obliged to take notice of any default on the part of the Company until it has received written notice thereof, signed by holders of at least per cent. in amount of the bonds outstanding hereunder.

(c) The Trustee shall not be personally liable for any debts contracted by it, nor for damages to persons or property, nor for injuries or salary or nonfulfillment of contracts, during the period wherein the Trustee shall manage the trust property or premises, whether upon entry or otherwise. The Trustee shall not be under any responsibility or duty with respect to the disposition of the bonds hereby secured or their proceeds.

(d) The Trustee may select and employ, in and about the execution of this trust suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Company, or in default of such payment, shall be a charge upon the hereby pledged premises and property and the proceeds thereof, paramount to said bonds. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything whatever, in connection with this trust, except wilful misconduct or gross negligence.

(e) The Trustee shall have a first lien upon the pledged property and fund for its reasonable expenses, counsel fees and compensation and any liability incurred by reason of the trust hereby created in the exercise and performance of its powers and duties hereunder.

(f) The Trustee shall be under no obligation or duty to perform any act hereunder, or defend any suit in respect hereof, unless reasonably indemnified. Excepting as herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a bondholder, unless or until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

(g) It shall be no part of the duty of the Trustee to file or record this Indenture as a mortgage, or conveyance of real estate, or as a chattel mortgage or conveyance of personal property, or to renew such mortgage, real or personal, or to procure any further, other or additional instrument or further assurance, or to do any other act which may be suitable and proper to be done to the continuance of the lien hereof, or for giving notice of the existence of such lien, or for extending and supplementing the same; nor shall it be any part of its duty to effect insurance against fire or other damage on any portion of the mortgaged property or to renew any policies of insurance, or to keep itself informed as to the payment of any taxes or assessments, or to require such payment to be made; but the Trustee may, in its discretion, do any or all of these things.

(h) The Trustee, or any successor or successors hereafter appointed, may resign and be discharged of the trusts hereby created by written notice thereof to the Company, and by publication at least in each week for successive weeks in a daily newspaper published in the , State of Pennsylvania, and by due execution of the conveyance herein required.

(i) The recital of facts herein and in said bonds contained shall be

taken as statements by the Company, and shall not be construed as made by the Trustee.

ARTICLE XII.

Section 1. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not. For every purpose of this Indenture, including the execution, issue and use of any and all bonds hereby secured, the terms " Company" includes, and means not only the party of the first part hereto, but also its successors and assigns.

Section 2. The word "Trustee" means the Trustee for the time being, whether original or successor; the words "Trustee," "Bond," "Bondholder," shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons belonging to the bonds secured hereby. The word "person" used with reference to a bondholder shall include persons, associations, partnerships or corporations owning any of said bonds.

The Board of Directors of Company has, by resolution, duly appointed its attorney to acknowledge this Indenture, and the said

 Company doth hereby constitute and appoint to be its attorney, for it and in its name and as and for its corporate act and deed, to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

The Board of Directors of the Trust Company has, by resolution, duly appointed its attorney to acknowledge this Indenture, and the said

 Trust Company doth hereby constitute and appoint to be its attorney, for it and in its name and as and for its corporate act and deed, to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In witness Whereof, the said parties hereto have caused their corporate seals to be affixed to an original and duplicate hereof, attested by their respective Secretaries, and these presents to be signed by their respective Presidents the day of , A. D. 19 .

Company.

By

President.

Attest:

Secretary.

Company.

Trustee.

By

President.

Secretary.

Attest:

State of Pennsylvania, }
County of } ss:

I hereby certify that on this day of , A. D. 19 , before me, the subscriber, a Notary Public in and for said County and State, personally appeared , the attorney named in the foregoing Indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Indenture to be the act and deed of the said Company.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public.

State of Pennsylvania, }
County of } ss:

I hereby certify that on this day of , A. D. 19 , before me, the subscriber, a Notary Public in and for said County and State, personally appeared , the attorney named in the foregoing Indenture, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Indenture to be the act and deed of the said Trust Company.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public.

Commonwealth of Pennsylvania, }
County of } ss:

Recorded on this day of , A. D. 19 , in the Recorder's Office of said county in Mortgage Book, Vol. , page .

Given under my hand and the seal of the said office the day and year aforesaid.

Recorder.

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ADDENDA

1918. Operation of Street Railway Companies on Forestry Reserves.

The Commissioner of Forestry and the Forestry Reservation Commission are hereby authorized and empowered to give to street railway companies, duly incorporated under the laws of this Commonwealth, upon such terms and subject to such restrictions and regulations as said Commissioner and Commission may deem proper, the privilege to construct, maintain and operate their lines of railway over, along and upon public highways, now laid out and in actual use, which lie within or border on any forest reservations now owned or hereafter to be acquired by the Commonwealth, whenever in the judgment of the said Commissioner and Commission the interests of the Commonwealth in the said reservations shall be benefited thereby. Act of April 15th, 1903, P. L., 200.

1919. License Taxes in Boroughs.

A borough has the power to levy an annual mileage license tax on the pipes and mains of a natural gas company maintained within the limits of the borough. *Kittanning Borough v. Consolidated Natural Gas Co.*, 219 Pa., 250 (1907).

A gas company is not relieved from the payment of a license tax in a borough because its pipes and mains in such borough are part of its natural gas system, are necessary to carry out its corporate purposes and the value of the same is included in its capital stock upon which it pays a State tax. The license fee is imposed in the exercise of the police power. *Kittanning Borough v. Garrett's Run Gas Co.*, 35 Pa. Super. Ct., 167 (1908).

A borough may impose a mileage license tax on the pipes and mains of a water company in the exercise of the police power, and where it does so the borough is not required to show the reasonableness of the tax, for the proper inspection, in the presentation of the case in chief. The burden is on the person who alleges that the tax is invalid upon the ground of its unreasonableness. *Kit-*

tanning Borough *v.* Armstrong Water Co., 35 Pa. Super. Ct., 174 (1908).

Where the evidence shows that a water company has dug up the alleys and paved streets of a borough in repairing its lines, changing connections and in searching for leaks and that the police of the borough have been occupied in watching for leaks, for unfilled ditches, and for obstructions to the public highways, etc., a license tax of thirty dollars per mile on six miles of water pipe is not so clearly unreasonable as to require the court to declare the tax invalid. *Ibid.*

1920. Similarity of Names of Charitable Associations.

On an appeal by one member of Saint Joseph's Roman Catholic Beneficial Society of Columbia, Pa., from a decree dismissing his exceptions, and granting a charter to Saint Josephs' Beneficial Society of Columbia, Penna., the Appellate Court will not review the decision of the lower court in granting the charter, where there is nothing to show that the decree involved an abuse of discretion. Saint Josephs' Beneficial Society of Columbia, Penna., 35 Super. Ct., 80, (1907).

1921. Occupancy of Bridges by Telegraph Companies.

Where a bridge company has granted to a telegraph company the right to lay its cables and wires across a bridge for an annual rental, the county in which the bridge is located cannot, on subsequently condemning the bridge, maintain a bill in equity to compel it to remove its wires and cables, or pay a rental for the use of the bridge, the county having in such case an adequate remedy at law. Beaver County *v.* Central District & Prtg. Co., 219 Pa., 340 (1908).

1922. Street Railway Switches and Sidings.

When a railway company has constructed its road within the period limited by law, it may subsequently construct from time to time such switches or sidings as may be necessary for its purposes, and the right to construct the same is not forfeited because it was not exercised by the company within the period limited for the location and construction of its road. Pottsville Boro. *v.* Peoples' Ry. Co., 148 Pa. 175 (1892).

1923. Right of Street Railway Companies to Enjoin Other Street Railway Companies.

"The rule of all the cases is that if the validity of the charter is attacked or a forfeiture of charter rights is asserted or an abandonment is claimed, the Commonwealth can alone raise the question by a quo warranto. It would seem to necessarily follow that when two companies, by oversight or otherwise, have secured a charter for practically the same route, the proper procedure to test the validity of the charters is by writ of quo warranto at the suggestion of the Attorney General. This is especially true when controversies arise between companies thus chartered and before the lines are graded and track laid. It is entirely proper for either company to petition the Attorney General asking that such a proceeding be instituted. Of course, if one of the companies is in the undoubted occupation of certain streets with the unquestioned right to use the same, and another company undertakes to invade that right, equity will enjoin the invading company on the ground that the validity of the charter is not involved and that only an incidental right growing out of the power conferred is in dispute."

In such case, however, an injunction will not be granted unless the corporation seeking relief has a clear legal right to the occupation and enjoyment of the property or right, the invasion of which is sought to be enjoined. Hence, where a street railway company, which had been reorganized after a judicial sale, sought to enjoin another street railway company from operating on certain streets covered by its charter and ordinances, an injunction was refused, it appearing that the purchaser of the property and franchises of the company at judicial sale had not assigned the same to the reorganized company nor was he one of the reorganizers. *Meyersdale & Salisbury Street Railway Company v. Pennsylvania & Maryland Street Railway Company*, 219 Pa., 558 (1908).

1924. Reorganization of Corporations After Judicial Sale.

Section 649 of this edition would indicate that only the classes of corporations referred to therein may be reorganized after judicial sale. In the case of *Gas and Water company of Downingtown v. Downingtown, et al.*, 193 Pa., 255 (1899) the Supreme Court say:—

"We are very clear that the Act of 1878 is not contrary to the

Constitution in extending the provisions of the act so as to embrace all corporations. . . .”

Any corporation, therefore, which has the right to mortgage its property and franchises, may on the foreclosure of the mortgage and sale of the property and franchises be reorganized under the provisions of the said acts. The writer is indebted to W. P. Beeber, Esq., of the Lycoming County Bar, for calling his attention to this defect.

1925. Consent of Abutting Property Owners to Construction of a Street Railway.

Where a land owner by words or deeds, though not in express language or by specific acts, but in effect, consents to the grading of a line of street railway and the laying of its tracks over a public highway on which his land abuts and makes no objection to the construction of such line, he is guilty of such laches as will prevent him maintaining a bill in equity to compel the line to be torn up and its operations enjoined. *Maust v. Penna. & Maryland St. Ry. Co.*, 219 Pa., 568 (1908).

1926. Right of Stockholders to Inspect Books of Their Corporations.

A stockholder of a corporation who has brought an action of trespass for deceit against the president of a corporation, as an individual, for misrepresenting the value of the stock of the corporation sold to the plaintiff, has no standing to demand an inspection of the books of the corporation in order to ascertain the value of the stock, for the purpose of obtaining information to be used in the trial of the said action of trespass. *Schondelmeyer v. Columbia Fire Proofing Co.*, 219 Pa., 610 (1908).

1927. Contracts of Foreign Corporations Not Registered in Compliance With the Requirements of the Act of April 22, 1874.

A foreign corporation is not doing business within this State which through its sales agents takes written orders for machinery to be shipped from its works without the State, to be erected at its cost under the supervision of one of its own employees sent to the purchaser's plant within this State for the purpose, where such order requires the written approval of the general manager of the corporation at its home office; and such contract is valid.

The only question in such case is the validity of the contract in suit, and it is immaterial whether or not the acts of the corporation contravened the statute. *Lambert Hoisting Engine Co. v. Carnegie Coal Co.*, 17 D. R., 227 (1908).

While the courts will not aid a foreign corporation which is not registered in compliance with the Act of April 22, 1874, to enforce a contract, they will aid it in obtaining possession of its property. Hence, an unregistered foreign corporation may maintain replevin for property seized by a constable for rent while in the possession of a commission merchant to whom it had been consigned. *Berryhill Mineral Springs Co. of Va. v. Pile, et al.*, 17 D. R., 246 (1908).

1928. License Fees of Telephone and Telegraph Companies.

Under the Act of April 17, 1905, P. L., 183, authorizing Courts of Common Pleas to fix the amount of license fees to be paid by telephone and telegraph companies as compensation for inspection and regulation of poles, wires, etc., held, that in Hollidaysburg Borough a fee of 10 cents per pole would compensate the borough for past years and 20 cents per pole for the years 1907 and 1908. *Postal Telegraph Cable Co. v. Hollidaysburg Borough*, 17 D. R., 298 (1907). And that in Gaysport Borough where the number of poles is small and there are no paid policemen a license fee of 20 cents per pole for 1906 and 25 cents per pole for 1907 and 1908 was proper compensation. *Pennsylvania Telephone Co. v. Gaysport Borough*, 17 D. R., 30 (1907).

1929. Conflict of Jurisdiction of United States Courts and Court of Common Pleas of Dauphin County in Appointment of Receivers of Trust Companies.

Creditors residing in the State of Ohio filed a bill in equity in the Circuit Court of the United States for the Western District of Pennsylvania alleging that their debtor, a trust company incorporated under the laws of Pennsylvania and doing business in that State, was unable to meet its liabilities as they matured and asking for the appointment of a receiver. The trust company admitted the allegations in its answer and joined in the prayer asking for the appointment of a receiver, who was thereupon appointed. Afterwards the Attorney General of Pennsylvania filed a petition in the Court of Common Pleas of Dauphin County alleging the insolvency of the trust company and asking for the

appointment of a receiver. Held, that the appointment of a receiver by the United States Circuit Court was not the result of a controversy between the parties to the bill as citizens of Ohio and the trust company, and that the purpose of the Act of February 11, 1885, was to preserve to the State, through its Banking Department the exclusive jurisdiction of banks and trust companies. A decree was granted declaring the trust company insolvent and appointing a receiver. *Com. ex rel. Attorney General v. Iron City Trust Co.*, 11 Dauph. Co. Rep., 31 (1908) ; 34 Pa. C. C., 503.

1930. Street Railways—Extensions.

Individuals who have filed articles of association in the office of the Secretary of the Commonwealth for the purpose of procuring a street railway charter, but to whom no letters patent have been issued, have no status to file a bill in equity under the Act of June 19, 1871, to question the right of a street railway company to maintain extensions and branches, on the ground that such extensions and branches cover streets and highways which were included in the contemplated route of the proposed street railway. *Andel v. Duquesne Street Railway Co.*, 219 Pa., 635 (1908).

1931. Beneficial Associations—Title to Moneys.

Funds raised by the members of a subordinate body of a beneficial association for sick and funeral benefits belong to the subordinate association, and are to be distributed by it to the parties for whose use and benefit they were contributed. The revocation of the charter of a subordinate body by the supreme body cannot have the effect of confiscating the property owned absolutely by the local body. The Act of June 20, 1883, P. L., 132, does not change in any way the application of this principle in Pennsylvania.

Where funds contributed by members of the subordinate body for sick and funeral benefits have been distributed to beneficiaries before a final decree of the court affirming the revocation of the charter of the subordinate body by the supreme body, the members of the subordinate body cannot be compelled by a court of equity to account to the supreme body for the fund in question; and this is especially so where it appears that the fund was in the hands of trustees, and had never in fact been in the hands of the members. *State Council Junior Order of United American Mechanics of Pennsylvania v. Emery*, 219 Pa., 461 (1908).

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